

EXHIBIT 24

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No.: 20-10343 (LSS)
BOY SCOUTS OF AMERICA AND
DELAWARE BSA, LLC, (Jointly Administered)
Debtors.
.
BOY SCOUTS OF AMERICA, Adversary Proceeding No.:
20-50527 (LSS)
Plaintiff,
v.
A.A., et al., Courtroom 2
824 Market Street
Wilmington, Delaware 19801
Defendants.
Wednesday, October 14, 2020
10:06 a.m.
.

TRANSCRIPT OF HYBRID ZOOM/TELEPHONIC HEARING
BEFORE THE HONORABLE LAURIE S. SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commenced at 10:06 a.m.)

2 THE COURT: Good morning, counsel. This is Judge
3 Silverstein. We're here in the Boy Scouts of America
4 bankruptcy case, case number 20-50527. Ginger, please remind
5 everyone of the protocol for the hearing. Ginger, I'm not
6 hearing you.

7 THE CLERK: It's extremely important that you put
8 your phones on mute when you are not speaking. Once
9 speaking, please do not have your phones on speaker, as it
10 creates feedback and background noise, and it makes it very
11 difficult to hear you clearly.

12 Also, it's very important that you state your name
13 each and every time you speak for an accurate record. Your
14 cooperation in this matter is appreciated. Thank you.

15 THE COURT: Thank you. Mr. Abbott.

16 MR. ABBOTT: Thank you, Your Honor. Derek Abbott
17 of Morris, Nickels, Arsht & Tunnell here on behalf of the
18 Debtors. Thank you, Your Honor, for making time. I know
19 your schedule is quite tight these days. It's been a little
20 while since we've been before the Court, so we thought it
21 might make sense for me to ask Ms. Boelter to give you just a
22 very sort of quick update on things about the case going on,
23 and then get to the agenda if we may, Your Honor.

24 THE COURT: Okay. Ms. Boelter.

25 MS. BOELTER: Thank you, Your Honor. Jessica

1 Boelter. Again, we understand that there is a very full
2 agenda for this morning, so I will be brief. We only have
3 two items that wanted to update the Court on.

4 The first of those is that the core members of the
5 Debtors legal team have switched law firms. You may have
6 noticed that from our pleadings. Myself, Mr. Andolina, and
7 Mr. Lindor have moved from Sidley, Austin to White & Case.

8 BSA has signed an engagement letter with White &
9 Case. They've also directed Sidley, Austin to transfer files
10 from Sidley to White & Case. And we, Your Honor, are very
11 mindful of the 30-day nunc program tunc rules in Delaware.
12 We will be filing our retention application in very short
13 order but wanted to give the Court a heads up with respect to
14 that transition.

15 The second item, Your Honor, is just a follow up
16 on the advertising motion that the Debtors filed previously
17 and was the subject of two Court hearings. In the past
18 several weeks, the Debtors have been inundated with
19 complaints related to unsolicited robo calling and
20 unsolicited what I'll call robo texting, if that is, in fact,
21 a term. Some of these robo calls and robo texts run afoul of
22 the Court's advertising order, in other words, they contain
23 phrases that the Court ruled should not be permissible in
24 advertising.

25 They also -- it's the Debtors concern that they

1 also may run afoul of the legal ethics rules in the various
2 jurisdictions where the text messages and calls are being
3 made. The Debtors are investigating the source of the text
4 messages and calls. We've already take it upon ourselves to
5 contact various parties and alert them of the Court's prior
6 order in this regard. But just to give the Court a preview,
7 we may be before you in very short order to the extent was
8 have difficulty enforcing the Court's order.

9 With that, Your Honor, that's the totality of my
10 update for today. I'm going to hand it back over to Mr.
11 Abbott unless the Court has any questions for me.

12 THE COURT: I do not.

13 MS. BOELTER: Thank you, Your Honor.

14 MR SCHIAVONI: Your Honor, this is Tancred
15 Schiavoni for Century, if I may be heard briefly on this
16 retention issue?

17 THE COURT: Yes.

18 MR. SCHIAVONI: So, Your Honor, if you recall when
19 in the course of the retention hearing for Sidley, Austin,
20 the Debtor was asked to put in submissions that were relied
21 upon by the Court in exercising what the Court characterized
22 as discretion to allow Sidley, Austin to continue, and the
23 element of the Court's decision was the submissions by Sidley
24 and it's consultants that Sidley's retention was critical in
25 the declarations they submitted and in their briefs, they

1 said that the change involving Sidley would be "catastrophic"
2 to the Debtor. This change that has now occurred has
3 happened at critical point in the case when a whole series of
4 decisions are being made between now and November 16th
5 including these motions that are before the Court. We don't
6 think. I know what the rule says about 30 days, but we don't
7 think the case can wait 30 days for the 2016 disclosures on
8 conflicts. It should come in pronto. They've known about
9 this change has apparently been in the works for some time
10 because an extension was sought of the appeal of the
11 retention application. We've known about it.

12 The impact of it on the case is, it's the prior
13 representations of Sidley Austin are correct, are
14 significant. So, we just ask that the 2016 disclosures be
15 made within a week. There's no reason to wait, you know, for
16 the full 30 days for those disclosures to be put in.

17 THE COURT: Okay, well, I'll deal with issues
18 related to retention when the retention is in front of me,
19 and White & Case, I was thinking of the firm, White & Case
20 takes the risk, as do all Counsel who come in, that their
21 retention may not be approved, and they may not get paid for
22 the work that gets done in this interim period. But I'll
23 deal with the retention issues when they're in front of me.

24 MS. BOELTER: Thank you, Your Honor.

25 THE COURT: Mr. Abbott.

1 MR. ABBOTT: Thank you, Your Honor. Derek Abbott.
2 We get back to the agenda, Your Honor, I would like if the
3 Court would entertain it to go a little bit out of order just
4 out of professional courtesy. We've got a large number of
5 folks on the phone or on Zoom that are here for Docket Item
6 No. 9 and probably only Docket Item No. 9. That's the
7 motion of the TCC for authority under rule 2004 to issue
8 subpoenas to the Debtors and local counsels and if the Court
9 would entertain it, I'd to start with that and turn it over
10 to, I don't know if it's Mr. Morris would likely to handle or
11 one of his colleagues.

12 THE COURT: That's fine. You can start with that.

13 MR. MORRIS: Your Honor, this is John Morris from
14 Pachulski, Stang, Ziehl, & Jones. Can you hear me?

15 THE COURT: I can. Let me remind people other
16 than Mr. Morris, please mute your phones. I'm getting a
17 little feedback.

18 MR. MORRIS: Good morning, Your Honor, John Morris
19 for the Tort Claimant's Committee. I'm pleased to report,
20 Your Honor, that the 2004 motion has been conditionally
21 resolved. I'd like to provide just a brief background as to
22 what led to the filing of the motion, as well as the
23 description of the terms of the stipulation that the Parties
24 entered into.

25 Immediately after the TCC was formed, we began the

1 process of seeking informal discovery from the Debtors. We
2 sought documents not just from the Debtors, but on behalf of
3 the local Counsels. The document sought included everything
4 that's the subject of the 2004 motion itself, and the request
5 for -- were first made at the end of March. Over time, I'm
6 happy to report that the Debtors, I believe, acted in good
7 faith and continue to act in good faith. And it made
8 available a large swap of documents for our review.

9 And the TCC has been working very hard over the
10 last months to prepare itself for the mediation, and to
11 otherwise educate itself as the financial condition, the
12 assets that are available, and other matters related to this
13 bankruptcy.

14 In the Spring, in the late spring, early summer,
15 we reached out to the ad hoc committee to get documents from
16 the individual committee members, we were told that we had to
17 seek those documents on a member by member basis, and we did
18 so. Again, informally, so as not to burden the Court. I'm
19 happy to report that all of the ad hoc committee members did,
20 in fact, produce documents, albeit not at the same pace and
21 not at the same level. But nobody refused to participate in
22 the document production.

23 And so, again, over the summer, we've collecting
24 documents from the ad hoc committee members and preparing
25 ourselves for this case. In September, we reached out to a

1 certain group of the local Counsels - - those that we thought
2 had a combination of the most of the claims against them, and
3 the largest asset case, and we made informal requests of
4 those local Counsels. We didn't receive a response. But
5 with the bar date coming, with the mediation pressures
6 increasing to move this case along, we filed what we believed
7 was an extremely narrow and prudent 2004 motion that was
8 limited to three very discreet topics, insurance policies,
9 restricted asset information, and rosters.

10 We had discussions, you know, with the Boy Scouts
11 and the ad hoc committee for some time about all of these
12 issues. We made it clear to everybody both in our papers and
13 in our communications that we weren't asking anybody to
14 reproduce anything that had been previously placed in the
15 data room. We were looking to make sure that we had all of
16 our insurance policies, not just the insurance policies of
17 the Boy Scouts but the insurance policies of the local
18 councils.

19 We wanted to make sure that if assertions were
20 made that assets were restricted and unavailable for
21 distribution. That there was a factual basis to support
22 those assertions, and so we've asked for that information and
23 we'd asked for the rosters, because that -- the rosters, we
24 believe, contain critical information relating to liability,
25 the validity of claims, potential claims the estate may have

1 against third parties.

2 And so, during the course of our discussions with
3 that the Debtor and with the ad hoc committee, we were able
4 to reach a quick agreement, particularly as to insurance
5 policies and the restricted asset information, and you know,
6 early on in the process they agreed that they would fill
7 whatever gaps remained with respect to those topics.

8 So, that's the first component of the stipulation.
9 The Boy Scouts and the local council ad hoc committees
10 members have agreed to produce all of the insurance policies
11 and all of the restricted asset information described
12 specifically in the stipulation.

13 With respect to the balance of the local councils
14 as Your Honor may recall, there is an injunction in place
15 preventing the prosecution of any claims outside of the
16 bankruptcy court against any of the local councils. The Boy
17 Scouts have until October 22nd to seek an extension of that
18 injunction. And we have agreed as part of the stipulation
19 that at least two of the conditions to an extension of that
20 injunction will be that all local councils complete the
21 production of insurance policies and restricted assets
22 information as described in the stipulation by mid-November.
23 Really by the bar date, that's the goal.

24 If for whatever reason we can't come to an
25 agreement on an extension of the injunction, the parties have

1 agreed that these matters, other than the Boy Scouts and the
2 ad hoc committee members commitment to providing insurance
3 policies and restricted assets information, all of that would
4 be back before the Court.

5 The one issue that we hadn't been able to agree on
6 my Sunday evening was the issue of the rosters.

7 So, the Boy Scouts and the ad hoc committee filed
8 their opposition papers on Sunday evening solely with respect
9 to the issue of the rosters. Discussions continued. On
10 Tuesday, yesterday afternoon, we presented a proposal that
11 would, you know, that we intended -- that the TCC intended to
12 address certain of the issues raised as regards to access and
13 use of the rosters.

14 And with that, Your Honor, we've reached an
15 agreement to simply fold that into the discussion concerning
16 the extension of the injunction. And what we would ask --
17 the only thing we would ask the Court today, is to see if we
18 can get on the calendar for October 23rd or soon thereafter
19 as Counsel can be heard to keep a date available in the event
20 that we can't reach an agreement. And I'm hopeful that we
21 can, but given the calendar, given the upcoming bar date,
22 given the need to participate in the mediation, if we're not
23 able to reach these agreements, Your Honor, the parties have
24 agreed that we would come back to Your Honor on October 23rd
25 or soon thereafter as Counsel can be heard. So, that's the

1 only thing that we request here today.

2 THE COURT: Oh, okay. My first question to you,
3 and I have looked at the Rule 2004 Exam Motion. You keep
4 saying the parties have agreed. And this motion isn't
5 directed at the DXA, and it's not directed at the local
6 council committee, it's directed at specific local councils,
7 who themselves had objected, some of them, to production. I
8 don't see how the BSA and the local council committee can
9 resolve a matter that doesn't involve them. So, do you have
10 agreement with all of the local council, or certainly those
11 that have objected as to a course of conduct with respect to
12 them?

13 MR. ABBOTT: I would say two things, Your
14 Honor. First, I think that question is more properly directed
15 at the ad hoc committee with whom I negotiated on behalf of
16 the local councils, but more importantly, Your Honor, we're
17 nothing seeking any relief today. What we've done is we've
18 simply kicked the can so to speak. And --

19 THE COURT: Yeah.

20 MR. ABBOTT: -- if they want to sign on,
21 they -- if they want to sign on to the injunction, they can
22 do that. They -- they're not obligated -- this doesn't
23 obligate them to do anything. If want to hear them, the
24 merits of the motion, I'm happy to do that today, too.

25 THE COURT: Well, people seem -- I'm seeming to

1 get --

2 MR. ABBOTT: Appropriate --

3 THE COURT: -- in this case and others, some
4 misapprehension of when you get to kick the can, and who you
5 have to speak to, okay? If a matter's been joined, you don't
6 get to unilaterally kick the can on your motion. You have to
7 speak with the people who have objected and see if it's
8 acceptable or come to the Court. But you don't get to on
9 your own kick the can. Nor do you get to, on your own,
10 decide that the replies are going to be filed at 4:00 o'clock
11 the day before the hearing, or extend deadlines --

12 MR. ABBOTT: We do have the motion --

13 THE COURT: -- beyond the --

14 MR. ABBOTT: -- Your Honor.

15 THE COURT: -- local rules.

16 MR. ABBOTT: We do have a motion for the late
17 filing.

18 THE COURT: Yeah, it's very presumptuous. I saw
19 in the stipulation that the previous stipulation that you all
20 had agreed to that. It's very presumptuous.

21 Let me hear from -- I'm not inclined to enter
22 any order. I'm not sure why I need to enter any order that
23 addresses what the BSA and local council committee are going
24 to do in connection with the motion that's not directed to
25 them? But let me hear - -

1 MR. ABBOTT: But that's what it is, Your Honor.

2 THE COURT: -- from the local council committee,
3 and I'll hear from the BSA, and then I'll hear from the
4 objectors.

5 MR. ABBOTT: Okay.

6 MR. CELENTINO: Your Honor, this is Joe Celentino
7 from Wachtell, Lipton, Rosen & Katz on behalf of the ad hoc
8 committee of local councils. Can you hear me?

9 THE COURT: I can.

10 MR. CELENTINO: Can you hear me, Your Honor?

11 THE COURT: I can hear you, I just can't see you,
12 so I have to look, but go ahead. Ahh, got you. Go ahead.

13 MR. CELENTINO: Very good. Thank you, Your Honor.
14 Your Honor, Craig Martin of BLA Piper is Delaware Council for
15 the ad hoc committee. He's on the line and I've admitted pro
16 hoc vice, but with your permission, Your Honor, I'd like to
17 speak on behalf of the ad hoc committee.

18 THE COURT: Yes, of course.

19 MR. CELENTINO: Thank you, Your Honor.

20 So, Your Honor, we've been -- as Mr. Morris said,
21 we've been working with the TCC on discovery for months here.
22 My committee has reached out even more broadly than
23 Mr. Morris Rule 2004 Motion goes to local councils and have
24 been engaged in a massive effort since the beginning of this
25 case, Your Honor, to collect information about local council

1 assets which we believe is important to a global resolution
2 of this case.

3 On the question that Your Honor just asked, you
4 know, I think it's important to realize that my committee
5 indeed does not represent all local councils. I rep -- the
6 committee is made up of eight local councils and I'm
7 appearing today on behalf of the committee and not on behalf
8 of any individual council.

9 What we would say with this -- respect to this,
10 Your Honor, is that Your Honor doesn't need to enter any
11 order today, any stipulation between the TCC adjourning this
12 motion and my committee does not bind, if you look at the
13 terms of the stipulation, any of the objectors, they do not
14 have to take any action here at this time. We are simply
15 moving the hearing date down the line in the hope that we
16 will be able to resolve it consensually, through voluntary
17 productions like the local contemplates. And so, Your Honor,
18 we think there isn't any need for an order here, and we don't
19 proprot to speak either today to you or in the stipulation on
20 behalf of the objecting local councils.

21 THE COURT: Thank you. I didn't think that you
22 did, but I appreciate that clarification.

23 MR. CELENTINO: Thank you, Your Honor.

24 MR. ANDOLINA: Your Honor, it's Michael Andolina,
25 White & Case, proposed co-counsel for the Debtor. May I be

1 heard on this?

2 THE COURT: Yes.

3 MR. ANDOLINA: Your Honor, as Mr. Celentino
4 indicated, his group has been working extremely hard over the
5 last several months trying to serve as a coordination point
6 for communications with all of the local councils. It's a
7 thankless job, and I think of all of us Mr. Celentino might
8 have the worst gig here. But what I will say in terms the
9 proposed stipulation is that the goal of the BSA, of the ad
10 hoc committee, and I think of the TCC, is to set up a
11 mechanism whereby we can have a proposed agreement on the
12 extension of a preliminary injunction.

13 As Mr. Morris indicated, October 22nd is the
14 expiration date for the current agreement that we have. On
15 that date, either we will have a proposed termination
16 extension notice that is agreed to by the parties, or the BSA
17 will have to file a motion to extend the preliminary
18 injunction which we assume the TCC would object to. The
19 negotiations that have been ongoing are an effort to create a
20 mechanism so that local councils will have an opportunity to
21 provide information, and the TCC will have an opportunity to
22 review that information and decide whether it sufficient so
23 that the extension of the preliminary injunction can be
24 continued.

25 So, as Mr. Morris indicated, the goal here really

1 is to allow the parties eight days to work through whatever
2 issues we may have to have an agreement that is either
3 adopted by all of the local councils or is rejected by some.
4 So, I don't think the current issue of the 2004 discovery is
5 before the Court, but what we're seeking is to have a hearing
6 on that delayed.

7 And I did want to address that the Court's concern
8 about extending the notice, that's well taken Your Honor. I
9 apologize on behalf of the Debtors. We were working hard to
10 try to get a resolution, but I recognize the Court probably
11 was preparing and in the future we will be sure to abide by
12 the local rules in terms of timing and I do apologize on
13 behalf of the Debtors for that.

14 THE COURT: Okay, thank you. Let me hear from any
15 objector who wants to speak.

16 MR. DUEDALL: Hello, Your Honor, this is Mark
17 Duedall for the Greater St. Louis Area Council. May I be
18 heard?

19 THE COURT: Mr. Duedall.

20 MR. DUEDALL: Thank you, Your Honor.

21 We have no objection subject of course to the
22 Court's calendar to the continuance. We were not consulted
23 on this because this is excessively odd. There's ad hoc
24 committee that's doing wonderful work but doesn't bind all
25 the local councils and there is good information flow from

1 time to time, but it is odd that though this seems to be
2 skirting the local rules in many respects.

3 There was no meet and confer before the motion
4 which happens, but it shouldn't happen. There was no
5 agreement to continue the hearing upon any party's objection
6 except by the Debtor and the ad hoc committee. There was not
7 agreement to extend the reply deadline, although they had
8 asked me if I had even heard from the TCC, which I still
9 haven't. I, of course, would have consented to extend any
10 reply deadline. So, have no objection to the procedure
11 they're laying out because there's no relief being granted
12 today. My Council takes the view that much of this
13 information is important and relevant and we have been
14 producing it, and we produced more last night, and we will
15 continue to produce information.

16 In short, Your Honor, since there's no relief
17 being sought today as to my client, GSLAC, I have no
18 objection to what they've laid out and things being moved
19 eight or ten or 12 days, what have you. But in the future,
20 it would just be good if there were -- there's not many
21 objectors, it would be good if there was dialogue among the
22 objectors as well as opposed to us just kind of hearing
23 what's being agreed to kind of on our behalf and kind of not.
24 That's what I would ask in the future.

25 THE COURT: Thank you.

1 MR. BROOKS: Your Honor, this is Todd Brooks from
2 Whiteford Taylor, may I be heard?

3 THE COURT: Yes, Mr. Brooks.

4 MR. BROOKS: Thank you. I represent the Baltimore
5 Area Council which is an objector. It's on the -- our
6 objection is on the docket at 1423. I'll be brief.

7 I share Mr. Duedall's support in the idea of -- I
8 don't know if the right word is continuing this, but not
9 going forward with the relief the TCC seeks today. My Council
10 likewise never received a telephone call for meet and confer.
11 On that basis lone, the Court could deny the motion as to
12 our Council.

13 I think that's I have to say for the time being.
14 Thank you.

15 THE COURT: Thank you. Anyone else?

16 MR. CORCORAN: Your Honor, this is Matt Corcoran
17 with Jones Day, may I be heard?

18 THE COURT: Yes. Mr. Corcoran.

19 MR. CORCORAN: I represent Council 10, and I just
20 echo the comments of the other council for the respective
21 councils. We did not receive any request to meet and confer
22 before the motion. We weren't consulted on the stipulations.
23 In fact, when an extension was granted to the BSA and the ad
24 hoc committee to file their objection two days later, we
25 reached and requested an extension and were denied the same

1 courtesy.

2 With that said, Your Honor, we are okay with
3 continuing the motion to a later date as long as we can
4 reserve all our rights to prosecute our objection and deal
5 with it at the time the Court hears it.

6 THE COURT: Thank you.

7 MR. BOWDEN: Your Honor, it's Bill Bowden at Ashby
8 & Geddes, may I chime in very briefly?

9 THE COURT: Yes, Mr. Bowden.

10 MR. BOWDEN: Thank you very much, Your Honor.

11 Your Honor, we filed on behalf of the Capital Area
12 Council, ad joiner to Circle 10's objection.

13 Your Honor, I -- I'm confident that ever party to
14 this hearing heard Your Honor's admonishment at the outset of
15 this matter. Capital Area Council does not object to the
16 brief adjournment of this issue to see if a resolution
17 acceptable to the parties can be achieved. And when I say the
18 parties, I mean the effected local councils and that's all I
19 have to add, Your Honor. Thank you.

20 THE COURT: Thank you. Any other objectors?

21 Okay. Given that the objectors are not objecting
22 to a continuance, I will continue the hearing. And I am
23 available on the 23rd, but this will be the only matter that
24 I hear then. I'm generally opening that gate to anything
25 anybody wants to file.

1 So, we'll continue it to 10 o'clock. And I expect
2 that the Tort Claimants Committee will reach out to the
3 actual objecting parties to see if there can be a resolution.
4 There should have meet and confer under the local rule which
5 requires as I recall, either in person or telephonic hearing,
6 or a telephonic communication. Even emails, I do not think
7 meet our local rule, and there's a reason for that which is
8 to open the communication pathway to see if there can be a
9 resolution. Let me add that I recognize the job that the
10 local council committee has been doing. I did not mean by my
11 comments to diminish their role. But it's been clear from
12 the beginning that they're a group of a council who have been
13 in dialogue but don't bind the local councils themselves and
14 this motion was directed at the local councils specific
15 individual local councils. And so the parties, in my mind,
16 are the Tort Claimants Committee and the individual effected
17 local councils.

18 Now, that doesn't mean that the Boy Scouts and the
19 local council committee can't make whatever agreements they
20 think are appropriate between them, but it doesn't resolve
21 the issues unless the Tort Claimants Committee wants to
22 withdraw its motion as to the individual local councils. So,
23 I think I've said enough with respect to that, but it needs
24 to be clearer that people are negotiating and speaking with
25 the correct parties.

1 MR. BOWDEN: Thank you, Your Honor.

2 MR. RUGGERI: Your Honor, James Ruggeri for
3 Hartford, may I be heard for a point of clarification?

4 THE COURT: Yes.

5 MR. RUGGERI: The clarification that we want is
6 this is the first we've heard of a stipulation that was
7 entered and we just want to be sure that the information,
8 whatever information is produced in response or pursuant to a
9 stipulation in response to the request is disclosed and
10 produced to all parties and interests in the data room or
11 otherwise, including the insurers, Your Honor.

12 THE COURT: Okay, well, I have not -- and I'm not
13 going to, quite frankly, in connection with this Rule 2000
14 for a motion intern order approving the stipulation. The
15 parties can stipulate to whatever they want to stipulate to.

16 I'm not going to enter an order. This doesn't
17 seem to me to be directed to the Rule 2000 for a motion. It
18 seems to be directed to the adversary proceeding and the
19 preliminary injunction.

20 And if the parties want to do something with
21 respect to that, and I mean the parties to that proceeding,
22 which again is sort of at an odd posture because the parties
23 to that proceeding are not just the Tort Claimants Committee
24 and the Boy Scouts, but, in fact, however many Plaintiffs
25 that have -- that exist in the underlying litigation, and

1 that were named in that lawsuit. So, it's been kind of
2 confusing from the beginning in terms of stipulations entered
3 among "parties" to certain litigation.

4 But I don't see a need to sign this, and I'm not
5 going to, and not in this context, because I think it has
6 nothing to do with the Rule 2004 motion. If the parties want
7 to put another stipulation in front of me, the parties,
8 meaning the BSA, the TCC, and the local council committee
9 want to put a stipulation in front of me in connection with
10 the adversarial aisle, entertain it.

11 But I don't see a reason to enter this here and
12 let me add that if the parties come to arrangements, I don't
13 need to sign off on everything. And I'm not sure why there
14 would be a need to. The parties have agreed, I assume they
15 will keep their word, and they will agree to do what they
16 said they're going to do. And I don't know that I need to
17 sign off on every agreement between the parties.

18 Mr. Derek -- Mr. Abbott, what's our next matter?

19 So, anyone who wants to be excused from the
20 hearing, feel free to drop off. You know, of course at any
21 time anyone can do that, but since we took this matter first,
22 anyone who wants to drop off, please feel free.

23 MR. ABBOTT: Thank you, Your Honor, Derek Abbott
24 again.

25 Moving back up the agenda to the first matter

1 going forward, that is the motion of the coalition with
2 respect to sealing their exhibit to the 2019 and approving
3 their 2019. So, I'll turn the podium to Ms. Beville, I
4 suspect.

5 THE COURT: Ms. Mersky, I think you're speaking
6 but you're still muted.

7 MS. MERSKY: Can you hear me, Your Honor?

8 THE COURT: Yes.

9 MR. ABBOTT: Both, I misspoke. I didn't mean
10 Ms. Beville, you're right. Ms. Mersky. Thank you, Your
11 Honor. Sorry about that.

12 MS. MERSKY: Good morning, Your Honor, on behalf
13 of the coalition, Rachel Mersky on behalf of the Coalition
14 for Abused Scouts for Justice. Mr. Molton will be first
15 addressing the Court regarding our motion.

16 MR. MOLTON: Judge, can you -- can you hear me,
17 Your Honor?

18 THE COURT: Yes, Mr. Molton.

19 MR. MOLTON: Okay. Thank you, Your Honor, I
20 appreciate it. I'm glad to be here.

21 I'm here, Judge, along with Ms. Mersky, I'm with
22 Sunni Beville who has spoken earlier in these proceedings,
23 Ms. Beville will be handling the 2119 issues and Eric Goodman
24 of our office will be handling the Proof of Claim issues,
25 Your Honor.

1 But I do want to take the opportunity at the onset
2 to announce two important events in connection with the
3 motions outstanding, and I'll be handling, Judge, when we get
4 to the Mediation Motion.

5 Number one is the resolution of the Trustee's
6 objection in connection with the Rule 21019 in connection
7 with the Coalition, Ms. Beville will be addressing that in an
8 instant. That leaves Your Honor only as we see it, two
9 outstanding objections that are still live, and that would be
10 the objections of the insurers and that objections of the
11 TCC, Tort Claimants Committee.

12 Off of yesterday, Your Honor, the mediators filed
13 a statement which we think is an important event in
14 connection with our role in this case, and I'm going to get
15 to that more at length and when I have the honor and pleasure
16 of addressing Your Honor in the Mediation Motion. But I
17 think it's important in the context of going into all of
18 these issues. That's their sentence, and particularly part
19 of their last sentence, being that and that is -- and that
20 statement was filed through the Debtors on behalf of the
21 mediators and at their direction and request. And it's to
22 quote, Your Honor, and this Docket No. 1500. "The absence of
23 the Coalition is a mediation party has and will continue to
24 hinder the mediation efforts to guide the parties to a place
25 of consensus, the time for which grows increasingly short."

1 And I want to underscore that last clause.

2 I know that Ms. Boelter and Ms. Andolina on behalf
3 of the Debtors have repeatedly this Court and all of the
4 parties that the Debtor is a melting ice cube.

5 They need a plan by early 2021 to be teed up. And
6 if this plan is going to result in Boy Scouts emerging and
7 continuing on its mission, which was I think broadcast to the
8 Court and the aspiration of the Debtor on its first day
9 hearing, if that's going to happen, Your Honor, then we have
10 to get moving.

11 The Coalition stands poised, ready, willing and
12 able to work with all of the parties, including those that
13 have stood up on, you know, and submitted objection against
14 our participation in this case, to see if that goal can be
15 reached. And that mean, Your Honor, in the next few months,
16 working with all the parties to seek -- see if we can find a
17 consensual resolution that will allow Boy Scouts to emerge.

18 I do want to note, Your Honor, that perhaps the
19 emergence of Boy Scouts in the manner that Ms. Boelter, I
20 think, described in the first day, may not be in the economic
21 interests of the insurers who might have reasons to see Boy
22 Scouts go into a free fall and turn into a liquidation.

23 I want to say, Your Honor, that that's just not my
24 though, and my pontification, but actually if you take a look
25 at what's happened in this case, this six- month old case, as

1 we stand poised over a crucial next four months, I don't
2 think that that's a conclusion that is necessarily wrong.

3 You weren't here, but I know that there was a lot
4 of time spent a disqualification of the Debtor's Counsel,
5 Sidley Austin. And we heard that again today. It -- you
6 do -- this morning that, you know, issue ways in connection
7 with the Whiteon cases emerging from this case. We saw time
8 wasted and useful resources utilized in challenges to a
9 mediators appointment.

10 Well, now it's our turn.

11 Your Honor has seen a rainfall of pleadings filed
12 in connection with what we think our useful participation in
13 this case, what the mediators have concluded is a necessary
14 participation in this case. What the Debtors have said is a
15 useful and valuable participation in this case, and what
16 other actors and parties and interest in this case including
17 the Unsecured Creditors Committee, the FCR, as well as the ad
18 hoc group of local councils have not objected. You know, and
19 I think that those non-objections also send a message.

20 Again, Your Honor, we'd like to -- we're looking
21 forward to presenting these motions today, getting through
22 them. We're looking forward to Your Honor deciding them and
23 accordingly after that introduction, I respectfully would
24 like to turn the rostrum or the Hollywood Square as you would
25 say it in our age, over to Ms. Beville who will describe the

1 resolution of our 2019 issues with the US Trustee as well as
2 deal with certain of the various objections extant in
3 connection with that issue. If Your Honor minds, I'll do
4 that right now.

5 THE COURT: That's fine. Ms. Beville.

6 MS. BEVILLE: Hi, I'm here, Your Honor?

7 Your Honor, we took your comments to heart at the
8 last hearing, and as noted by Mr. Molton, works to resolve as
9 many objections as possible and complete disclosure of the
10 2019 documents in accordance with the order that Your Honor
11 entered regarding the motion to file the documents under
12 seal. Your Honor, as we move forward just procedurally, it
13 is from our view that your order address our motion to file
14 under seal and it leaves open for today the sufficiency of
15 the disclosures under 2019 and then in regards to the
16 Coalition's Mediation Motion.

17 I'm very please, Your Honor, as Mr. Molton
18 reported that the Coalition has reached an agreement with the
19 United States Trustee's office that resoled this objection to
20 the Rule 2019 statement that was filed by the Coalition, and
21 as Mr. Molton noted we do have the full support of the
22 Debtors and the mediator. The only remaining objecting
23 parties, Your Honor, are the insurers and the TCC, and I will
24 address objections later on in my presentation.

25 But first, Your Honor, I would like to note that

1 the agreement that we've reached with the US Trustee was --
2 in the supplement that we filed last night at Docket No.
3 1510. It was filed at the request of the US Trustee's Office
4 to document and reflect the terms of the agreement and I will
5 allow the US Trustees Office to speak for itself as to the
6 resolution.

7 But, Your Honor, for the benefit of everyone here,
8 I wanted to just highlight the agreement we -- is that the
9 Coalition's itself will consist of members that are the
10 survivors that have signed affirmative consent. You may
11 recall on our papers, Your Honor, that one of the things we
12 did after the hearing was send written request for
13 acknowledgement by the clients of the law firms that are
14 representative on the committee, and I am pleased to report
15 that as of this morning's hearing, we have over 7,300
16 affirmative consents that we've received directly from
17 clients of the law firm that presented it.

18 So, Your Honor, going forward the Coalition will
19 not note that it represents all of the clients of the law
20 firm at this point, which totals over 28,000. We will
21 restrict the membership of the Coalition to only those
22 members that sign the affirmative consent.

23 Your Honor, we also have acknowledged in our
24 papers that the individual survivors be Coalition members
25 themselves are not responsible for payment of the Coalition

1 fees and expenses that the professionals, those fees are
2 being paid by state court councils directly. State Court
3 Counsel will provide notice to their clients of the same
4 change in payment status in accordance with their ethical
5 obligations in any applicable jurisdiction, whether it's
6 through affirmative consent or otherwise.

7 And Your Honor, just to be clear, the 2019
8 statement does not in any way prejudice any party's rights
9 to -- ethical or either issues that might arise or have
10 arisen in connection to the Coalition's formation or other
11 actions by the Coalition.

12 Your Honor, it our view that the Rule 2019
13 statement is a disclosure issue to the extent parties raise
14 other issues with respect to ethics compliance or otherwise.
15 Frankly, Your Honor, it's not relevant to the hearing now,
16 and if there are issues to raised, they can be done so in
17 reason and in as an affirmative motion but be the best to
18 whatever the issue may comport with, whether it's voting
19 or -- plans -- in other cases, but, Your Honor, those aren't
20 the facts before the Court today.

21 Before I move forward, Your Honor, it would be
22 helpful for us to just to back and give you sense of what's
23 happened since the last hearing like from a factual
24 development perspective. Following the hearing, Your Honor,
25 and at your direction, the Coalition provided to all

1 requesting parties and those identified in the order -- into
2 the motion to file under seal, unredacted copies of the
3 Exhibit A document that were filed with our original 2019
4 statement, but the only redaction being with respect to the
5 pricing information included in the state court council
6 engagement letter.

7 Your Honor, on September 29th, Kosnoff and Andrew
8 Van Arsdale resigned from the Coalition. In the weeks
9 following the hearing, several new law firms were added to
10 the Coalition and their clients became Coalition members.

11 The new firms, Your Honor, are Motley Rice, Napoli
12 Shkolnik, Mark J. Garn and Partners (phonetic), Crowd
13 Continsman Law Firm (phonetic), Juneau and Associates
14 (phonetic), and Whisevinda (phonetic). But Your Honor, that
15 brings us to a total of 11 law firms acting as
16 representatives in the Coalition representing over 28,000
17 sexual abuse victims.

18 On October 7th, the Coalition filed its second
19 amended verified 2019 statement. That, Your Honor, included
20 the pillars of 2019. We'll walk through those later in my
21 presentation. Included an updated disclosure from Exhibit A,
22 filed those under seal in accordance with Your Honor's order
23 and also produced those unredacted copies to the correcting
24 parties.

25 And to the entities identified in your order as

1 well. Thereafter, Your Honor, the Coalition continued its
2 discussions with the US Trustees and ultimately reached a
3 resolution of the US Trustee objection. And as I noted
4 earlier, Your Honor, that resolution resulted in the
5 Coalition restricting its membership to only those members
6 who returned the affirmative consent, and as I noted to date
7 we've received about 7,300 returned affirmative consents.

8 Your Honor, the Coalition engaged in discussion
9 with the other objectors, namely the TCC and certain of the
10 insurers. But we were unable to resolve those objections.

11 And so, Your Honor, now to focus on Rule 2019.
12 Rule 2019, Your Honor, is a disclosure requirement.

13 The issues relating to Rule 2019 generally relate
14 to what must disclosed and subject to what confidentiality
15 restrictions. And Your Honor, I would -- that Your Honor's
16 order on the motion to file under seal addressed the
17 confidentiality component and the decision before the Court
18 today is what must be disclosed. And, Your Honor, we believe
19 that we have disclosed all documents that are required Rule
20 2019.

21 And, Your Honor, as we go through the cases that
22 are cited by the objecting parties, that are cited by the
23 Coalition, all of those cases go to disclosure. They may
24 arise in different context, in context of plan voting or in a
25 context of a law firm trying to file proof of claim. In each

1 of those instances, Your Honor, the Court that was
2 considering Rule 2019, what was the remedy. It was
3 disclosure. And underlying issues relating plan voting or
4 proof of claims was out -- separately as a separate matter.
5 But the resolution of the Rule 2019 issue was disclosure.

6 So, Your Honor, the Coalition is an ad hoc
7 committee and pursuant to Rule 2019 and we have asserted
8 otherwise. We are subject to and have made our disclosures
9 pursuant to Rule 2019. The Coalition represents -- the
10 Coalition as a whole, in consequently is a collective
11 interest of the individual members, we do not represent the
12 individual members individually.

13 I'll turn your attention, Your Honor, to the WaMu
14 Washington Mutual Case which outlined exactly how ad hoc
15 committees function and the value of how ad hoc committees
16 function in bankruptcy cases. Your Honor, in Washington
17 Mutual, which is cited at 419BR271, it was a 2009 case Your
18 Honor, in the District -- bankruptcy court in Delaware before
19 Judge Walrath and their -- Your Honor, identified that ad hoc
20 committees are typically a loose affiliation of creditors.

21 There's an at will major of committee membership
22 is one of the defining characteristics of ad hoc committees.
23 Because membership at will, the ad hoc committee cannot bind
24 members absent their consent.

25 And generally, all members must agree on any

1 position the committee takes.

2 Your Honor, in Washington Mutual, the judge noted
3 that the ad hoc committee filed pleadings collectively, not
4 individually, and took its instructions from the group as a
5 whole. And in this case, Your Honor, Judge Walrath noted
6 that the council does not represent each member in an
7 individual capacity but rather the group as a whole. And I
8 bring your attention to that case, Your Honor, simply to
9 refute the statements and the objections that, you know, ad
10 hoc committees represent the individuals, this is unusual.
11 How can this ad hoc committee function?

12 An ad hoc committee as contemplated by Rule 2019,
13 is a group of creditors acting collectively to advance a
14 common interest. And that is exactly what that Coalition is
15 here, Your Honor, it is a group of sexual abuse victims
16 represented by their law firm who formed the Coalition and
17 retained bankruptcy counsel to represent the collective
18 interests of the sexual abuse victims in these cases.

19 Your Honor, there have been various issues raised
20 regarding the Coalition's authority to act. And to refresh
21 your recollection, Your Honor, I addressed this at the last
22 hearing, but to make sure there's not confusion, the -- each
23 member of the state court council engagement letter
24 explicitly authorizes Counsel to associate with co-counsel.

25 Your Honor, this express consent provided in the

1 engagement letter that authorizes the association of Brown
2 Rudnick as Counsel representing the collective interests; in
3 our view, nothing further was required. Those State Court
4 Counsel, Your Honor, then signed engagement letters with
5 Brown Rudnick and the Murphy Firm verifying their authority
6 to sign and bind their members to a term.

7 At the time of our original 2019 filing, State
8 Court Counsel sent a letter to all of their clients informing
9 them of the formation of the Coalition and the retention of
10 bankruptcy counsel. To address concerns -- hearing, Your
11 Honor, the State Court Counsel sent a request for written
12 acknowledgement to all clients. At the time of our filing of
13 the amended 2019, we'd receive more than 4,500 affirmative
14 consents and in that short time that has passed since then
15 that number had now risen to over 7,300 affirmative consents
16 received. And, Your Honor, part of the resolution that US
17 Trustee's office is that the United State Trustee may, at its
18 request audit the affirmative consent to review and make any
19 necessary assessments as to the validity of those affirmative
20 consents.

21 So, Your Honor, especially given now that the
22 membership of the Coalition is restricted to the members that
23 sign affirmative consents, and those affirmative consents,
24 Your Honor, acknowledge the formation of the committee, being
25 a coalition, acknowledge that the individual is a member of

1 the Coalition, acknowledged that the fees and expenses will
2 be borne by the State Court Counsel, acknowledged that the
3 State Court Counsel is authorized to direct Brown Rudnick as
4 counsel to the Coalition, and acknowledge that the Coalition
5 represents the collective interest of the Coalition and not
6 the individual member's interest. And, Your Honor, with that
7 affirmative consent in hand, we don't see there being any
8 concern further in that Brown Rudnick has the authority to
9 act on behalf of the Coalition.

10 So, Your Honor, as I mentioned in the Washington
11 Mutual case, we cannot bind individual members and we cannot
12 bind the law firms individually, but we can make
13 representation and we can make recommendations that the law
14 firm client takes certain action, support a plan, development
15 of a plan a certain way, this is not unusual, Your Honor. We
16 have seen instances like this in mass tort bankruptcy cases
17 where ad hoc committees have played a vital roles in
18 mediation and development of a plan, and in those cases, Your
19 Honor, and I'm referencing cases like Purdue, and PG&E, and
20 when Mr. Bolton has a chance to take over, he can describe
21 the role of the ad hoc committees in more detail. But this
22 isn't anything that we have created out of --

23 Ad hoc committees can play a meaningful role and I
24 would deposit here Your Honor, that we have played a
25 constructive role in this case to date. Our participation

1 that's been that's been -- as advertising motions, the motion
2 that we recently filed regarding a attainting of signatures,
3 I pushed the claim, Your Honor, even not being a -- we have
4 provided detailed claims data to the better than the
5 mediators that have been incredibly helpful for them to start
6 to really review what that claim - where are the located,
7 what would their claims resolutions have to start to look
8 like and as recently as yesterday, Your Honor, we spoke with
9 Counsel to the ad hoc committee of local councils, and have
10 given permission for the Debtor to share that claims data
11 with the local councils so they can start to identify what
12 types of claims may be raised as -- certain of the local
13 councils on an individual basis as opposed to a collective
14 aggregate number of 28,000 sexual abuse victims in the case
15 more generally.

16 Your Honor, moving into the specifics of Rule
17 2019, and I will ask if you'd like me to walk through each of
18 the, you know, requirements and there are C1, C2, C3, and C4.
19 And in summary fashion, Your Honor, we provided the names and
20 addresses, the incident data, the types of claims, how my new
21 Coalition members, we have provided, I think more than is
22 required on your C4. The case, Your Honor, that deal with
23 additional disclosures under C4 almost all -- and that's
24 requiring the law firm or the ad hoc committee to disclose
25 their intention agreements, which we have already done here,

1 Your Honor.

2 In addition to that, we provided copies of the
3 affirmative consent that is being requested in the initial
4 notice that was sent out. And, Your Honor, at least in my
5 review of the cases, I haven't seen a law firm that ad hoc
6 committees that extra step to provide evidence of their
7 authority to act as an ad hoc committee.

8 Your Honor, it is our view that these disclosures
9 comply with the governing Third Circuit precedent, the use of
10 exemplar if it was permitted in expressly in the Third
11 Circuit in a Pittsburgh -- case. All of these cases, Your
12 Honor, are included in our papers and I trust that you are
13 familiar with those and won't take up the Court's time
14 reviewing each of those cases. But, Your Honor, I do want to
15 highlight that the cases that are cited by the insurers are
16 the distinguishable here and don't stand for the proposition
17 that the insurance company -- please review that somehow we
18 have failed to disclose or must be compelled for additional
19 disclosure.

20 In the Arch Dioces of Minneapolis case, Your
21 Honor, that was a case where a law firm was responsible for
22 over 70 percent of the claims that were being voted on in the
23 plan by one law firm, and what developed in that case, Your
24 Honor, was the Court ordered the production of that law
25 firm's retention agreement. And that is exactly what we have

1 already done here, Your Honor. And there is, Your Honor, a
2 case that's been cited very heavily by the insurers. That
3 was a pre-packaged bankruptcy, Your Honor, where the terms of
4 the plan had been negotiated pre-petition for solicitation
5 and voting on the plan had occurred pre-petition. And there
6 was a small group of locked arms that presented a vast
7 majority of the -- creditors in that case. And there were
8 objections and then crushed into a -- by the insurance
9 companies as to how -- whether or not that was a good, safe
10 process. And relied on Rule 2019 to obtain disclosure from
11 the lock arms that were involved in that process, and the
12 outcome there, Your Honor, was disclosure.

13 The lock arms were required to produce copies of
14 their intention agreements which, again, Your Honor, we have
15 done both here.

16 I would like to make note, Your Honor, that the
17 same parties here that are going for additional disclosure or
18 are prohibiting the Coalition from shift -- in the cases,
19 themselves have not followed the rules of the cases. The TCC
20 has not filed a 2019, the insurers' attorneys representing
21 more than one client, have not filed 2019 statements. There
22 are other ad hoc committees involved in these cases, Your
23 Honor, that have not filed 2019 statements. It is a
24 selective application of the rule here, Your Honor, designed
25 to prevent sexual abuse victims from having access to the

1 bankruptcy and having their voices heard, and it is time,
2 Your Honor, to make that stop and allow these victims to be
3 heard, have them participate in the mediation process and
4 allow these cases to move forward.

5 Your Honor, we made note in our motion that there
6 is a question regarding whether the insurers even had
7 standing to object to the 2019 disclosures. There is a group
8 of cases, Your Honor, that we have cited that including the
9 Third Circuit in Ray Combustion Engineering (phonetic) at 391
10 at third 190, that indicates that insurers must demonstrate
11 that they are a grieved person by order that "diminishes
12 their property, increases their burden, or impaired their
13 rights" and, Your Honor, the case law followed from that
14 decision really, including it he 2019 context, Your Honor,
15 and I refer to Pittsburg Corning and Kaiser -- where the
16 Courts ruled that the insurers lacked standing to challenge
17 the Rule 2019 order, and Pittsburg Corning, Your Honor, very
18 familiar to the facts here, the insurers were alleging
19 conflicts of interest on the part of the Plaintiff's lawyers
20 and alleged the need to investigate fraudulent asbestos
21 claims. And there, Your Honor, the Court did not deny access
22 to information, it ensured that the insurance companies had
23 access to the Rule 2019 disclosure, but they lack standing to
24 appeal the Rule 2019 order itself.

25 Similarly in Kaiser, Your Honor, the court ruled

1 that the insurance companies lacked standing to challenge
2 Rule 2019 order. That required the insurance companies to
3 file a motion to obtain access to the information. And
4 there, Your Honor, the Court noted that insurance-neutral
5 plans are possible, and until such time as a plan is before
6 the court that does not have insurance neutrality provisions,
7 the insurance companies lack standing.

8 There are other cases, Your Honor, where the
9 insurers did have standing to object, and in those cases,
10 Your Honor, including Baron and Budd, which was a case where
11 it was arguable that the plan was not insurance-neutral, in
12 which case the insurance companies had standing.

13 But Your Honor, even if the insurance companies
14 have standing and you are here to hear their objection, I
15 must note that their accusations on Coalition is a marketing
16 label are baseless. The Coalition itself has not undertaken
17 any advertising.

18 Your Honor -- and I mentioned it in the hearing
19 last time -- what the insurance companies and the TCC are
20 responding to is the number of victims here.

21 There have been allegations by the insurance
22 companies that these are fraudulent claims, that we're
23 drumming up claims. But Your Honor, going back to 2002 when
24 the Boy Scouts did its own investigation and released a
25 portion of the files, the portion of the files that were

1 released, Your Honor, identified at least 5,000 individuals
2 that were released from the Boy Scouts for perpetrating or
3 potentially allegedly perpetrating abuse against Boy Scouts.

4 So Your Honor, that number is 5,000. In many of
5 those cases, the perpetrators allegedly abused more than one
6 victim. Your Honor, that brings you to the thousands of
7 victims that existed -- that the Boy Scouts potentially knew
8 of in 2002. And that does not include the victims that did
9 not come forward, that did not speak, and that does not
10 include the perpetrators that were included in files that had
11 been lost.

12 So when we hear the insurance companies argue that
13 we're manufacturing claims, Your Honor, there is no evidence
14 to support that. There will be a claims resolution process
15 as a part of a plan or any trust distribution procedures, and
16 that, Your Honor, is the appropriate time to review and
17 reconcile claims and ensure the validity of the claims.

18 Again, Your Honor, 2019 is a disclosure issue, and
19 I posit, Your Honor, there is no additional disclosure that
20 the Coalition needs to make here. But to the extent, Your
21 Honor, you've identified something that the Coalition needs
22 to produce, we simply request the opportunity to hear about
23 the deficiency. That is all for now. Thank you, Your Honor.

24 THE COURT: Thank you. No, I don't have any
25 questions. I wanted to hear your presentation. I will say

1 that the Rule 2019 statement is a little confusing. Maybe of
2 necessity by use of terms. But as to who exactly the
3 Coalition is, is it the law firms, is it the clients.

4 I think you've cleared that up. But more
5 importantly from my perspective is the written
6 acknowledgements that have now been received from the 7,300
7 or so clients because it did -- I was concerned about that
8 and who the committee is and even who the clients are.

9 The -- but one thing about this case, and I don't
10 know if it's the same in other mass tort cases or not where
11 there are ad hoc committees, is the group seems to change.
12 And what's the anticipation if the group changes in terms of
13 updating the Rule 2019 statements?

14 MS. BEVILLE: Your Honor, I would anticipate that
15 we would file periodic updated statements as either
16 additional law firms joins as representatives and their
17 clients join, as we continue to receive signed affirmative
18 consents. I don't know the timing of when the numbers will
19 be changing materially. Obviously, it happened rather
20 quickly over the past week. But we would endeavor to provide
21 throughout reports, Your Honor, if you have specific time
22 frame, we're happy to do it every other week, once a month,
23 but in any event, when the numbers change materially, we have
24 updated either new law firms or a material number of new
25 affirmative consents, we will file an updated 2019 statement

1 reflecting those changes.

2 THE COURT: Okay. Let me -- let me hear from
3 the -- let me hear from Mr. Schiavoni.

4 MR. SCHIAVONI: Your Honor, it's hard for me to
5 say I don't want to speak, but if I may pass to Mr. Ruggeri,
6 who has a witness.

7 THE COURT: Yes, you can pass to Mr. Ruggeri.

8 MR. RUGGERI: Good morning, Your Honor. That
9 indeed is a first that Mr. Schiavoni has yielded the floor
10 when called upon.

11 Judge, let me start by addressing Mr. Molton's
12 comments in suggesting that we're making objections for
13 improper reasons. We're not, Your Honor. There's a process
14 that needs to be followed. We're following the process.

15 Do we have an economic interest? We do, as
16 everyone participating in this case has an economic interest.

17 So we're all trying to do what we need to do and
18 do our jobs to deal with our respective economic interests.
19 But there's nothing nefarious or improper about anything that
20 the insurers are doing.

21 With regard to standing, it's a little easier here
22 because we are a creditor. So we don't even fall into the
23 argument, although the insurers clearly have a stake in the
24 2019 disclosure here.

25 We heard about a rainfall of pleadings. There is

1 a rainfall going on, and the Court's talked about it before.
2 We just saw two days ago some websites now published 50,000
3 claimants -- more than 50,000 claimants are expected to be
4 filed in this case.

5 Why is that important? It's important because the
6 predicate for the ad hoc committee, the Coalition's
7 participation in this case was the representation that it
8 represented the vast majority controlled the vast majority of
9 the claims, the sex abuse claims that we're talking about in
10 this case.

11 The Court has seen the Kosnoff email about
12 chilling out and going sailing and representing 80 percent or
13 more of the claims. What we heard this morning is very
14 different. What we heard this morning is that the Coalition
15 actually today represents as few as 14.6 percent of those
16 claims, if we're looking at the 50,000-plus number. Or no
17 more than 26 percent of the claims, if we're using the 28,000
18 number, which counsel has said the law firms represent 28,000
19 claims, of which they've only received the affirmative
20 consents for 7,300.

21 And I will say -- and maybe it was inadvertent,
22 but Ms. Beville's presentation caused further confusion
23 because, on the one hand, she said the Coalition's only
24 represented the affirmative consents, and then later on when
25 she was introduced to the new counsel, she referenced that

1 the Coalition represents 28,000 members.

2 So we still don't know sort of the scope of the
3 engagement here. I will tell you that I thought we were
4 looking at the Coalition coming in and asking the Court not
5 to kick the can down the road but to acknowledge that today's
6 proceeding on this issue was premature because late last
7 night, they filed a document that said the affirmative
8 consents are coming in, and that they will file in seven
9 days -- seven days they're going to file an amended 20 -- a
10 further amended 2019 disclosure, which is going to tell us
11 who they represent, at least as of that time.

12 That's one of the issues that we've been looking
13 for from the beginning, Your Honor. Had they provided some
14 information to us? They have. We don't doubt that. And
15 it's been helpful. But have they made a complete showing on
16 who they represent? No. So we don't know on whose behalf
17 they're empowered to negotiate.

18 And presumably, it looks like we won't know that
19 for at least another seven days when they intend to file a
20 further supplemental filing.

21 Had they produced the foundational documents that
22 will allow us to see not only who purports to act on behalf
23 of these Coalition members but on what basis do they purport
24 to act on their behalf, we don't. We saw recently filings
25 referring to by-laws. I think they were by-laws from

1 September. We haven't been produced the by-laws.

2 If we were produced those by-laws, it may help us
3 get our arms around to make sure we know who's at the table
4 and how they're at the table. Where are the empowering
5 documents? We don't have those. There are by-laws. We know
6 there are by-laws. They have not been produced.

7 We heard today that it's not unusual to have an ad
8 hoc committee. I agree with counsel. It's not unusual to
9 have ad hoc committees, but what's unusual is to have an ad
10 hoc committee in my experience that really overlaps the job
11 of the official committee.

12 The official committee has the fiduciary
13 obligation to represent these same claims. This is
14 apparently just a subgroup of those same claimants whose
15 interests are already being represented and not -- not a big
16 bag of representation or interests to be representative.
17 It's the same claimants.

18 But they want to be separately represented, and
19 they want to be separately recognized in negotiating, even
20 though their numbers may total as few as 14.6 percent of the
21 interest --

22 THE COURT: Is that relevant --

23 MR. RUGGERI: -- that are already represented by
24 the committee.

25 THE COURT: Explain to me the relevance of that.

1 Explain to me the relevance of -- to 2019, the relevance of
2 a, as you call it, subgroup of those who are represented in a
3 representative capacity by the tort claimants committee.

4 MR. RUGGERI: Admittedly, Your Honor, it gets into
5 the merits of the participation and the mediation motion. It
6 really begs the question of why. It's not a question of
7 disclosure in that regard once they identify who their
8 members are. But there is a direct overlap of Mr. Stang and
9 his committee, who is charged with a fiduciary obligation to
10 represent those same claimants. So it's a question of need.

11 And the representations on the stated need is that
12 these folks were needed because of their majority
13 representation, which appears to be incorrect in terms of the
14 affirmative consents that are coming back.

15 So I don't know -- I don't see the need for this
16 separate collection of an ad hoc committee, nor do I think
17 that it aids the process. But more importantly from a
18 disclosure standpoint, we don't know who they are still.

19 We're not going to know for seven days who they
20 are. We don't have the empowering documents. We do have
21 concerns about the ability of the state court counsel to
22 purport to engage the Coalition counsel, the Brown Rudnick
23 firm and the Monzack Mersky firms to represent the Coalition.

24 And in turn, we have questions about the
25 affirmative -- the informed consent that the state court

1 counsel purports to have received. And that's in connection
2 with our submission to the Court of declarations by Professor
3 Moore, we've offered the Court two declarations that go to
4 those issues and really go to the issue of informed consent
5 on every level.

6 What we can't happen here is to empower a
7 Coalition, it seems to me, that is tainted by virtue of
8 either Coalition counsel wasn't represented by law firms who
9 had the authority to represent them, or the claimants, the
10 claimants, the individual claimants -- I still don't know
11 who's the real client here of the Coalition -- but the
12 individual claimants did not give informed consent to their
13 lawyers to engage the Coalition counsel to represent this ad
14 hoc collection of interests, Your Honor.

15 We have offered the declarations to the Court.
16 They've been filed on the docket, ECF 1499-2 and 1499- 3.
17 Professor Moore has joined us here this morning. She is
18 available to testify, if needed. We're certainly pleased to
19 offer her declarations into evidence in lieu of her direct
20 testimony and to make her available for cross-examination and
21 allow her to support her testimony and her opinions on the
22 inadequacy of the disclosures and the conflicts that are
23 raised by the disclosures if the Court deems that
24 appropriate.

25 THE COURT: Are they inadequacies of disclosures

1 relevant to 2019 or are they inadequacies of disclosure
2 relative to an attorney/client relationship?

3 MR. RUGGERI: Your Honor, both. I think that the
4 Coalition's filing last night tells us there's an inadequacy
5 disclosure of the interests they represent because they just
6 recently sent out those affirmative acknowledgements to their
7 clients. They haven't come back and there's going to be more
8 filed within -- they say seven days.

9 THE COURT: And as I said, this sort of rolling
10 nature of --

11 MR. RUGGERI: Understood.

12 THE COURT: -- the Coalition or committee is
13 something that I'm not sure exactly what to do with.
14 Nonetheless, what is it that your client doesn't understand
15 about who Ms. Beville represents?

16 MR. RUGGERI: I don't understand the individual
17 claimants because it's incomplete. I don't understand the
18 rolling admission of state court counsel in and out. I don't
19 understand the Kosnoff and Van Arsdale situation, who still
20 have clients who apparently are represented by -- in the case
21 by the Rothweiler firm. They were the triumvirate, if you
22 will, that flashed and engaged people on the abuse and
23 scouting letterhead, all three of them.

24 So we're told that Kosnoff and Van Arsdale have
25 resigned. Have they? Have they really? I don't know, but

1 who is really directing traffic? If I saw the bylaws, for
2 example, I might be able to get an understanding of who's
3 directing traffic here. Who's empowered to direct the
4 Coalition counsel to act on behalf of the Coalition. We
5 don't know that today, and that is a disclosure issue, Your
6 Honor. That is a disclosure issue with regard to that issue,
7 Your Honor. It's an adequate disclosure.

8 THE COURT: Well, I will state that the
9 resignations -- I don't want to say they're a red flag, but I
10 will say they're interesting. And I'm not sure why they
11 happened or needed to happen or what the impact of that is.
12 I will agree because their clients are still -- at least some
13 of them, those who have returned the written
14 acknowledgement -- are still part of the Coalition.

15 MR. RUGGERI: They are, Your Honor.

16 THE COURT: Assuming the Coalition are the actual
17 clients. So --

18 MR. RUGGERI: And Your Honor, we don't have a
19 resignation from the Eisenberg Rothweiler firm either, and
20 that was -- the three firms were associated counsel on behalf
21 of their clients. So we only have Kosnoff and Van Arsdale
22 who "resigned", but I don't know what that means, if it
23 really means anything given the nature of the situation. But
24 there hasn't been full disclosure of that.

25 And it may be the Kosnoff resigned because of the

1 attention that his email is receiving in this case, and --

2 THE COURT: Could have been.

3 MR. RUGGERI: -- likely will continue to receive.

4 THE COURT: It could have been. Or the notice of
5 his deposition. There could be a number of reasons for it,
6 and whether he's behind the scenes calling the shots is an
7 interesting question. I guess for purposes of 2019 -- and I
8 want to understand -- I think there's no question that --
9 well, I shouldn't say that.

10 When you say you don't know who Ms. Beville's
11 representing, because you don't know every detail and nuance
12 of the relationships, or because you suspect, or because
13 there may be -- I don't want to put words in your mouth that
14 go beyond what you're saying -- that there may be some
15 impropriety in the solicitation of clients, the -- or there
16 may be some ethical obligations that underlying counsel are
17 not comporting with.

18 How does that impact Rule 2019 as opposed to
19 whatever concerns are raised by the conduct of not
20 Ms. Beville's firm but the six, nine, however many law firms
21 there are now --

22 MR. RUGGERI: Your Honor, in addition to your
23 list, and this is a disclosure issue, seems to me, there's
24 the equivocation internally in the documents that have been
25 produced, including the engagement letter, both the state

1 court counsel engagement letters and the Brown Rudnick
2 engagement letter. That makes it unclear who are the
3 clients.

4 There's internal equivocation on that. So what
5 we've heard is Ms. Beville today seek to clarify that issue,
6 but that doesn't change what the documents themselves say.
7 So there are issues with regard to that.

8 There is a disclosure issue with regard to the
9 individual claimants as we talked about, and the Coalition
10 concedes in the filing it made last night and the
11 representation is going to make a further filing within seven
12 days of further supplemental disclosure to -- so we'll have a
13 better understanding of who they represent.

14 It's also undisputed that we don't have the
15 bylaws. The by-laws, I think, are important disclosure so
16 that we understand, again, the empowering documents, who was
17 the authority to act on behalf of the Coalition and to
18 instruct someone to act on behalf of the Coalition. Those
19 are all classic, in my view, disclosure issues, Your Honor,
20 and that are to be resolved at this stage.

21 The other issues with regard to the ethical
22 propriety or impropriety or those issues there get closer to
23 the line of whether they're disclosure issue or whether those
24 should be taken up separately.

25 But we do have (inaudible) at the same time that

1 there's a request for the Court to approve the sufficiently
2 admitted disclosure, we have a request to allow this
3 Coalition to participate in the mediation. And I dare say
4 that I don't know that the mediators have received the same
5 information that the Court received today, even in terms of
6 the scope of the representation of the Coalition and the
7 numbers that they represent.

8 So I think we get closer, but I do have a concern
9 that if we are going to be at a mediation and that mediation
10 with one of the parties is infected by conflict, and I think
11 the mediators have been clear that they only believe the
12 Coalition should be there if it's a legitimate Coalition
13 that's not tainted with any of those concerns that the last
14 thing we want to have is to go through a mediation and then
15 have another ad hoc committee come forward and say, that's
16 great you had that negotiation, but that Coalition didn't
17 represent my interests because I didn't give informed consent
18 for it to do that.

19 That's our concern, Your Honor. One of our
20 concerns at the mediation to make sure that we have the right
21 parties there who have the authority to negotiate on the
22 people they say they have the right to negotiate on behalf
23 of.

24 THE COURT: Well, they're going to have the --
25 let's assume they have the authority for the moment to

1 negotiate. They've already said as the Coalition of local
2 counsel has said that they don't bind their individual
3 members. They're negotiating, but they don't bind their
4 individual members, just like Mr. Ruggeri, you don't bind
5 your client until your client says you bind your client. And
6 you --

7 MR. RUGGERI: You're right.

8 THE COURT: You negotiate, and you don't bind them
9 until your client agrees.

10 So I'm trying to understand whether the membership
11 is 7,000 clients, 10,000 clients, or 14,000 clients, or
12 28,000 clients.

13 In terms of the underlying policy of Rule 2019 and
14 understanding the motivation and the economic position so
15 that there's awareness of where a group is coming from, how
16 is that your client doesn't know that?

17 MR. RUGGERI: Your Honor, we do now know the
18 7,300 -- although they haven't been provided to us, the
19 affirmative consent. That's something we know. What we
20 don't know is that this Coalition represents the majority of
21 interests that it purported to represent when it first
22 entered this case. So that dynamic has changed.

23 At the end of the day, although the Coalition
24 counsel can't bind the client, the parties -- and with my
25 client as well -- you're correct in terms of I can't bind.

1 But I do come to the table with the authority, proper
2 authority, unconflicted authority to negotiate on my client's
3 behalf, on behalf of the client that I purport to represent.

4 And that's what makes this a little bit different
5 because we don't know, in fact, that the Coalition counsel
6 has the proper, unconflicted authority to participate at the
7 negotiating table the way the other parties do as to whom
8 there are no such issues.

9 THE COURT: And what do you mean by unconflicted
10 authority?

11 MR. RUGGERI: If the state court counsel did not
12 have authority to engage Coalition counsel on behalf of their
13 client, we have a problem. We have a problem. And if you
14 look at Professor Moore's declaration in this case that she
15 identifies that problem.

16 And simple example, for example, the word
17 associate. What does associate mean? If you look at the
18 engagement of the state court engagements, associate really
19 means to represent the individual interests. And that's not
20 what we're told they're doing now with regard to associating
21 in the Brown Rudnick firm and the Monzack Mersky firm. It
22 means something else.

23 So as a client who's told they're associating in
24 this new counsel, okay, I don't think it's clear to the
25 client that it means that counsel is not being engaged to

1 represent your individual interests. I think the (inaudible)
2 is used. So that's a real problem. So that's an example
3 of --

4 THE COURT: I think I raised that last time as a
5 possible question that I didn't know the answer to.

6 But I think I raised that as to what does
7 associate counsel mean. But --

8 MR. RUGGERI: And it still is --

9 THE COURT: Now we have these written requests for
10 written acknowledgement. Why doesn't that solve the problem,
11 to the extent there was one?

12 MR. RUGGERI: I think the question is, Your Honor,
13 for example, there is no explanation of the divergent
14 interests that this counsel represents, for example. There
15 also is -- my recollection is there's a statement that the
16 Coalition counsel has been -- or the individual members have
17 been availed of the opportunity to be provided information as
18 opposed to information being provided to them.

19 So there's a difference in terms of providing
20 acknowledgement whether you're providing acknowledgement
21 based on informed consent or an uninformed consent.

22 And the question these acknowledgements to me,
23 Your Honor, is whether the consent provided by these
24 claimants is informed consent after, for example, a full
25 disclosure of the conflicting interests that Coalition

1 counsel is representing through this Coalition, where if I'm
2 the individual claimant, again, if someone is associating for
3 me, then I believe they're associating in to represent my
4 interests. That's a problem that still exists with regard to
5 these engagements, Your Honor.

6 THE COURT: And how is that problem addressed in
7 other mass tort cases?

8 MR. RUGGERI: Your Honor, I don't want to speak
9 out of school in terms of the other mass tort cases. You are
10 familiar with the Baron and Budd case. That case does
11 involve one of the new state court counsel who's entering --
12 who entered an appearance here a couple of days ago. So
13 there was a requirement of full disclosure in terms of the
14 retention agreements that some would argue went above and
15 beyond.

16 So I think it does -- it varies based on the case,
17 Your Honor. It varies based on the facts and circumstances
18 that are presented.

19 THE COURT: I did read the Baron and Budd case.

20 It kind of plops you in the middle of the case
21 itself if you're not familiar with all the underlying facts,
22 which I'm not, and that's not a criticism of the judge
23 because I do that, too, sometimes and assume familiarity with
24 the case because I'm writing for the parties.

25 So it kind of plops you in the middle, and it deal

1 with ethical issues. But ultimately -- it seemed to do so
2 because -- well, first of all, it also dealt with the
3 previous iteration of the rule. So that's one issue that
4 could be a distinguishing factor.

5 But what does Judge Ferguson say? She says -- she
6 seemed to suggest that the treatment under the plan that
7 was -- and the fairness of the plan's classification system
8 was involved. So there was some very specific provisions of
9 this prepackaged plan, which I'm not -- don't know what they
10 were -- that seemed to call into question the good faith
11 filing issues. But she seems to have had some very specific
12 concerns about a negotiation that went on pre-petition that
13 affected the rights of other creditors.

14 MR. SCHIAVONI: Your Honor, this is Tanc
15 Schiavoni. I argued before Judge Ferguson the 2019 motion,
16 and I -- perhaps after Mr. Ruggeri or now, I could just
17 address that specifically.

18 THE COURT: I'll let you address it afterwards.
19 But I did read that -- you know, I did read that case, and
20 I'm not surprised to hear you argued it. The -- but from the
21 case itself, it seems kind of -- yeah. Somehow those clients
22 got preferential security interest. I don't know what
23 happened there.

24 But we're certainly not at any of that kind of
25 stage. But ultimately -- ultimately what she said was you

1 need to disclose stuff.

2 MR. RUGGERI: Right. I think we're not at that
3 stage, Your Honor. Congoleum has a long and sordid history,
4 certainly, and there were good faith filing issues. But with
5 regard to the issue that we're touching on today, from my
6 perspective, the importance of that ruling was the
7 requirement that there be full disclosure of potential
8 conflicting interests. That's what the effect of the
9 requirement for the disclosure in that case was, and that was
10 my lesson that I take in terms of the 2019 issues at bottom.

11 And I'm happy to let Mr. Schiavoni expound from
12 there if he has a different take from the perspective of the
13 one who argued it. But that's the lesson from that case with
14 regard to the issues that we're raising on behalf of my
15 clients is the adequacy of the disclosure of the potential of
16 conflicting interests, Your Honor.

17 THE COURT: Okay. And specifically, then, because
18 where I'm struggling is if there's disclosure, then how deep
19 do I get into the professional obligations of the underlying
20 counsel and whether they have fulfilled whatever their state
21 law, professional obligations are?

22 MR. RUGGERI: Your Honor, I certainly think it
23 comes into play in terms of approving the adequacy of the
24 disclosure if we can't rule out the issues over the conflicts
25 and we can't satisfy ourselves that the disclosures were

1 adequate and that the Claimants were adequately disclosed or
2 informed of the potential conflicts, then I do think it goes
3 in the adequacy of the 2019 disclosures because there's an
4 absence of that information.

5 And that leads in, again, I still don't know why
6 we don't have the bylaws. If folks wanted to address some of
7 our concerns in terms of empowering documents, that to me
8 seems to be one of the easiest documents that should have
9 been made available so that we know what is the document or
10 what is the instrument that empowers people to do what
11 they're doing in good faith. And that may go some of the way
12 towards satisfying our concern about not knowing who has
13 authority to act and on what basis do they have the authority
14 to act.

15 We have counsel coming in and out now. How is
16 that happening? We now have 11 counsel, right? I thought --
17 I didn't know if the 11 counsel represented all 28,000. They
18 apparently may but only a subset of the 28,000 is actually
19 represented through the Coalition.

20 So there's lots of inconsistency here, not just
21 the numbers, but in terms of the conflicts, in terms of the
22 empowering instrument and documents, and we think that is
23 part of the disclosure obligation here, and I think that
24 they're wrestling so much over this conflict issue.

25 And then you lay on top the withdrawal of Kosnoff

1 and Van Arsdale, there are lots of questions here.

2 And we don't have the information to really answer
3 those questions.

4 And again, the metaphor used by counsel at the
5 last hearing about the stool, if a stool has a rotten leg,
6 the stool collapses. And that's what we're concerned about
7 here.

8 THE COURT: What are the bylaws going to tell you?

9 MR. RUGGERI: Who directs Coalition counsel, Your
10 Honor, for example. How --

11 THE COURT: So that they have to have a majority
12 vote of the -- I mean, what are they going to tell you?

13 MR. RUGGERI: I don't know what they'll tell me
14 about, for example, who comes in -- you asked the question
15 who comes in and comes out. That could be addressed in the
16 bylaws. I don't know. I don't know who purports to have the
17 authority to represent Coalition counsel. I don't know if it
18 says anything about the basis on which they purport to have
19 the authority. I would like to see it. I think it's --

20 THE COURT: Well, what you'd like to see -- I
21 don't think what someone would like to see is the standard.
22 I think the standard is what has to be disclosed under Rule
23 2019. Whether somebody likes the disclosures or doesn't like
24 the disclosures, I don't think is the issue. I think the
25 issue is what has to be disclosed. And the reason --

1 MR. RUGGERI: Correct, Your Honor. Financial --

2 THE COURT: -- the reason for the disclosure is so
3 that the other side knows where a party's coming from.

4 Right? I mean, that was the whole impetus behind the rule
5 change. I forget where I have that.

6 I actually went back to Judge Gerber's letter on
7 the -- and I think it was 2008 or 2009 when they were looking
8 at whether to abolish Rule 2019 or not. The Rules Committee.
9 Or to extend it.

10 And the idea was parties and the Court need to
11 understand where people are coming from. And I don't -- we
12 know where this group is coming from. You may not like where
13 this group is coming from. But we know where they're coming
14 from, don't we?

15 MR. RUGGERI: I think we know they're coming from
16 state court counsel who purports to have the authority to
17 empower Coalition counsel. But I really don't know where
18 they're coming from in terms of who is calling the shots. I
19 didn't -- I used an improper word when I said I would like to
20 have the bylaws. I think the bylaws are necessary to a full
21 disclosure here because the bylaws may tell us who is
22 empowered to direct the Coalition counsel.

23 The Court mentioned majority. I don't know if
24 it's the majority or not. I don't know if there's been a
25 single person -- single law firm appointed. I don't know how

1 the firms come in and how they go out. Those are sort of the
2 issues.

3 So I think we don't know who really is at the
4 table and on what basis that person is at the table. I think
5 that, again, that the concern grows up from the individual
6 Claimants to their state court counsel, state court counsel
7 to Coalition counsel. So I think the bylaws are necessary to
8 a full and appropriate disclosure in a 2019 context when
9 these issues pervade, Your Honor.

10 MS. BEVILLE: Your Honor, may I respond to the
11 issues that were raised here?

12 THE COURT: Not yet. Not yet.

13 MR. SCHIAVONI: Judge, should I be heard when
14 they're done or after (inaudible)?

15 THE COURT: I'm going to hear you after
16 Mr. Ruggeri's done.

17 MR. STANG: And Your Honor, this is Mr. Stang, I
18 would like to make a couple of very points -- targeted
19 comments.

20 THE COURT: Yeah, I'll hear from you too. Just
21 looking for what I did with -- yeah, I don't have,
22 unfortunately, my -- where I annotated then-Judge Gerber's
23 January 9, 2009 letter. But he talks about understanding the
24 other person's agenda. What's their agenda. And he talks --
25 this is in the context of distress debt, investors in

1 distress debt, and understanding that perhaps sometimes they
2 own multiple -- they own -- at different positions in the
3 debt structure. And sometimes they may even want the company
4 to fail, that that might be in their best interest rather
5 than have the company succeed.

6 So he talks about understanding, having
7 information and disclosure to understand the agenda of the
8 parties in front of you. He actually even suggested that
9 disclosures be made by every party in a case. That did not
10 get adopted.

11 But his concern was, in particular, discretionary
12 decisions that judges have to make and understanding the
13 party who's in front of you making the argument about what's
14 in the best interest of the estate, when they have a
15 particular agenda that the judge and other parties do not
16 know about because there's been no disclosure.

17 Now again, this is his letter to the advisory
18 committee rules committee. And it's his view, which then
19 Judge Drain actually adopted and came up with a copy of other
20 reasons why Rule 2019 should not be abolished.

21 But when you read the letters and you read the
22 legislate, you read the committee history, and you take a
23 look at the cases, the idea really is do you know the agenda
24 of the party, of the committee, and where they're coming
25 from. Does everybody understand their economic -- or

1 other -- this was dealing with economic -- but their economic
2 or other interests that they are advocating for so that if
3 it's -- something's undisclosed, you don't know.

4 Here, I guess the question is what don't we know
5 about the agenda of these -- of the Coalition. What don't we
6 know about their agenda?

7 MR. RUGGERI: Well, Your Honor, I think one of the
8 questions is -- I think we learned a lot about the agenda
9 through Mr. Kosnoff's email that was sent on June 28th and
10 provided to the Court.

11 THE COURT: Yes.

12 MR. RUGGERI: And now what we know is that
13 Mr. Kosnoff has "resigned". So I don't know if the agenda
14 that he set forth in that pretty long email, which was pretty
15 transparent on the agenda, continues to be the agenda or not.

16 THE COURT: Let's assume it is the agenda. Let's
17 assume it is and that we know the agenda. And, yeah, we can
18 take a look at that letter, and we certainly know his agenda.

19 MR. RUGGERI: And the question would be whether
20 that's a legitimate agenda. It would come into --

21 THE COURT: No, is that what Rule 2019 goes to?

22 I don't think Rule 2019 goes to whether it's a
23 legitimate agenda or I like the agenda because parties
24 certainly can advocate for their own positions, and they do
25 every single day.

1 MR. RUGGERI: Sure, but --

2 THE COURT: What is their best interest? And
3 there's nothing nefarious about advocating for what you
4 believe is in your best interest.

5 MR. RUGGERI: There's not, Your Honor, but we see
6 in the papers filed since then, where the Coalition has moved
7 itself away from that agenda, if you will. And again, it
8 begs the question in terms of what is Mr. Kosnoff's real role
9 here now in light of this purported resignation, where he
10 still continues to represent -- purports to represent many of
11 the Claimants, and he's still part of Abuse in Scouting,
12 which as I said two days ago, published north of 50,000
13 claims it expects to be filed here.

14 So I don't know what the agenda is or not. I
15 certainly haven't heard the Coalition say that their agenda
16 remains consistent with the agenda that Mr. Kosnoff charted
17 back in June, Your Honor. So I think there is an open issue
18 there in terms of what is the Coalition's agenda.

19 THE COURT: Well, I suspect you'd be happy if
20 their agenda deviated from what was in that -- what was in
21 that letter to be something more productive.

22 MR. RUGGERI: I think that may be so. But the
23 question marks about the agenda is another reason why there's
24 an open request for discovery of Mr. Kosnoff, which think the
25 Court will address later today.

1 THE COURT: I will address it.

2 MR. RUGGERI: So that is an open issues in terms
3 of the agenda.

4 THE COURT: I will address that. But what I'm
5 dealing here with -- and I agree, the issues for today are
6 somewhat intertwined, okay? But I think for purposes of
7 2019, I'm focused on disclosure.

8 MR. RUGGERI: Understood.

9 THE COURT: And understanding where the ad hoc
10 committee is coming from and who they represent, and I think
11 it's abundantly clear who they represent. There may be other
12 issues. I do have some concern, quite frankly, about
13 ensuring that each underlying Plaintiff is adequately
14 represented by their underlying counsel.

15 But I'm not sure how I'd get involved in that.
16 And I have those concerns because of the numbers. IF you get
17 calls from, you know, 500 people between now and
18 November 16th, can you effectively represent all of them? I
19 don't know.

20 But -- so I have some concerns. But I don't think
21 I have Rule 2019 concerns. Let me -- if there's -- and I
22 appreciate the declarations of Professor Moore, which may
23 have very valid concerns. I'm not sure how that impacts
24 2019.

25 MR. RUGGERI: I think the most obvious point, Your

1 Honor, is the bylaws, and that is something that Professor
2 Moore does address in her declarations. The absence of the
3 empowering documents. So that is one of the opinions that
4 she expresses. She knows who purports to have authority to
5 speak on behalf of the Coalition, but she doesn't see
6 evidence of the empowering documents, and that's added to her
7 also concerns about whether there are valid attorney/client
8 relationships that have been established on behalf of
9 Coalition counsel and the state court counsel or Coalition
10 counsel in the underlying Claimants. Her opinion is that
11 there are no valid attorney/client relationships that have
12 been established between the Coalition counsel in either of
13 those groups.

14 And also, her concern is I still don't understand
15 where the empowering documents are, which is standard, even
16 for ad hoc committees. And it actually is raised by the
17 supplemental filings the Coalition made in adding the new
18 state core counsel with the express reference to those
19 bylaws, Your Honor.

20 THE COURT: Okay. Thank you. Thank you. And --
21 okay, the bylaws. Mr. Schiavoni, I'll hear from you next,
22 then I'll certainly hear from Mr. Stang, I think, spoke up
23 for the QCC.

24 MR. SCHIAVONI: So you know, this is Tanc
25 Schiavoni for Century. I'd like to address really Baron and

1 Budd because I think it's extremely relevant here. But if I
2 can just take one step back from it, and that is that just
3 how -- what is 2019, and how did it come to pass, and what is
4 it intended to address?

5 The SEC was a major proponent behind the adoption
6 of Rule 2019, and it followed from a series of abuses that
7 had taken place in connection with a voting lockup agreements
8 being entered into that were undisclosed among creditors and
9 then how that distorted the plan process later that went on.

10 THE COURT: Right, so wasn't that insiders --
11 wasn't that the concern that there were insiders and -- I
12 forgot what they called the committees that really ended up
13 controlling -- that really ended up controlling how a plan
14 was presented to the court, and nobody knew about the
15 insiders' influence?

16 MR. SCHIAVONI: Exactly. That's exactly what was
17 happening. And Justice Belglitz (phonetic) at the time -- he
18 wasn't a justice that he was working at the SEC -- he wrote
19 about this as part of the advocacy to have 2019 adopted. And
20 what he focused on was how these committees were being formed
21 and maintaining secrecy because they were trying to get, as
22 he put it, "the emollients of control". There were financial
23 benefits -- if you could hold yourself out to the debtor as
24 "controlling" the plan process, you could derive from it
25 financial benefits that -- for your group that otherwise

1 would not be achievable. And that's what led to these
2 terrible abuses that had happened.

3 Granted, sort of in different contexts. But those
4 issues have direct application and in a much important way to
5 amass to our case. You've seen, Your Honor, the - you've
6 seen Mr. Kosnoff's email. There's almost no question here
7 that he's holding this group out as holding a voting lockup
8 arrangement of some sort, the nature of which is not
9 disclosed, but he's made it very clear to the mediators and
10 to the debtor that he holds that threat.

11 And the debtors are kind, you know, they're like
12 deer in a headlights with this. It's like if they think that
13 they hold the veto over them emerging, they will do, in
14 essence, almost anything he says. That's a problem.

15 And where -- let me just tie the connection to
16 that that what was going on at Baron and Budd. You've seen
17 also, by the way, with Mr. -- with the retention agreements
18 that were disclosed here that in some ways, this sets up
19 incentives that were even worse than what Justice Douglas was
20 dealing with at the time because there it wasn't just the
21 creditor interest, but here, you've seen those retention
22 agreements -- 40 percent of the claim is held by these state
23 court firms.

24 In addition to that, the Coalition legal fees,
25 they -- if they obtain the emollients of control and they can

1 derive a plan as they want it, one of the things this
2 submission said last night is they reserve the right to have
3 the Coalition's legal fees -- Brown Rudnick's fees, and all
4 the costs of the Coalition borne by the Claimants out of the
5 plan itself, either through the plan or through the --

6 (Overlapping voices)

7 THE COURT: Ms. Beville, you'll have a chance to
8 respond, but please don't interrupt.

9 MR. SCHIAVONI: But through a substantial
10 contribution award. What happened in the Baron and Budd case
11 was there was a pre-pet. It failed, just like the pre-pet
12 here failed. The case went into a regular bankruptcy. That
13 group that was formed pre- petition, they continued to
14 operate as a group. And Judge Ferguson was -- you know,
15 addressed that situation. She had some emails that were a
16 little like what Mr. Kosnoff had. And she -- it was
17 discovery there. We were permitted to take Mr. Rice's
18 deposition of Motley Rice. And by the way, that's the same
19 Mr. Rice and the same Motley Rice that is now behind the
20 Coalition.

21 This firm has no history of any involvement in
22 abuse -- sexual abuse cases with respect to the Boy Scouts as
23 far as we've been able to ascertain.

24 They've interjected themselves at this point in
25 the case.

1 When Mr. Rice was deposed, and one of the things
2 that came out was that there were agreements by and between
3 the law firms that were undisclosed to the clients about how
4 this voting -- how the emollients of control, the benefits
5 that they would derive from having a voting block would be
6 racked up among the different participating law firms.

7 Judge Ferguson saw that, and she entered an order
8 that basically sort of tracked 2019. And this disclosure
9 requirement here that I don't think Mr. Ruggeri, or the Court
10 is really focused on, but it's 2019(c)(2)(b). It's the one
11 about disclosing the -- all disclosable economic interests.
12 I mean, the Court probably could have just like kind of
13 skipped over that, thinking that's just about the fact that
14 they -- an abuse Claimant has a claim against the estate.
15 But it's more than that, and Judge Ferguson realized that.

16 She was like I want on the table all of the
17 arrangements that are out there. And what that led to was
18 disclosure that among those law firms, they had agreed to
19 kickback some of their fees to Mr. Rice, that there was a
20 fee-sharing arrangement among them that was tied up into
21 their -- into the voting lockup agreement that was in place.

22 And what was critical about that was that that
23 then played itself out that the talk here about how these
24 secured interests worked in that case, it played itself out
25 over the course of the case because some Claimant groups --

1 there was a dispute. You've got some minor case in Imerys,
2 and ultimately, you'll get a sense of here between how money
3 is sort of to be allocated among the different types of
4 claims and the different types of claimants based on the
5 proof they have.

6 Think about what you're presented here as far as
7 this fact pattern. You have one set of lawyers and law
8 firms, who by the way are not part of the Coalition, who
9 historically have brought claims against the Boy Scouts, and
10 there were a relatively small number of these claims going
11 into the filing.

12 These lawyers think that because they vetted their
13 clients and the rejected ones that they didn't think were
14 meritorious, they think that their clients have very
15 meritorious claims, and they've collected a lot of proof on
16 them.

17 Then there's this other group, including the
18 Motley Rice firm, has no history in these cases, which is
19 somehow engage these call centers to generate huge numbers of
20 claims by running cable TV ads very quickly. And it's like
21 there's almost no proof on them at all, and we're going to
22 find that they have a very different nature. And they're
23 going to have a totally different interest than how a plan is
24 designed, how the TDPs are designed, and what claimants get
25 paid what. That was the exact dispute that played itself out

1 in Congoleum. And it totally distorted the plan so that
2 there was an effort by the group, the controlling group, to
3 put in place a TDP that you just simply had to sign -- just
4 check a box that you were exposed to the product, and you got
5 paid pretty much the same as most of the other people in the
6 case.

7 That kind of dispute, I don't think you'll hear
8 from Mr. Stang -- it's like what's going on behind the scenes
9 is something that I don't think we'll hear from him. But
10 it's like that kind of thing plays itself out here. And we
11 brought a cross-motion -- we actually brought the motion in
12 the first place, asking for an order that just ordered
13 compliance with these different provisions, including a
14 specific ordering clause of 2019(c)(2)(b) asking that each
15 disclosable economic interest be put out.

16 To the extent the small group affirms have
17 borrowed or may have borrowed a huge amount of money from
18 third-party vendors, if they've ceded any control to those
19 vendors in making settlement decisions, if they've reached
20 any agreements between each other about fee sharing between
21 them, that ought to be on the table. That ought to be
22 disclosed so that the mediators and the debtor and us and the
23 Court all understand their economic interests here.

24 Because with Congoleum, it turned that it led to
25 the plan being held to be not in good faith because with

1 those economic interests on the table, it was clear to the
2 court that TDPs were being distorted by these fee-sharing,
3 split-up, you know, kickback agreements between the lawyers.

4 It's vital information. If we had had
5 Mr. Kosnoff's deposition, we might have sort of been able to
6 get a peek at what was going on. But without that discovery,
7 you don't have any assurance at all of that compliance with
8 2019(c)(2)(b). That's why we'd ask for either -- you know,
9 we could have the affirmative discovery on this or we could
10 just have an affirmative order that we submit it with our
11 motion a copy of the order that was entered by Judge
12 Ferguson, that was upheld by the District Court, that laid
13 out exactly what should be -- you know, how -- it's an order
14 that tracks 2019 and requires these disclosures.

15 Otherwise, all we have are sort of these amorphous
16 statements by counsel that are hearsay and untested that
17 there's been compliance. But we really don't know. And
18 that's why this is vital. It's vital to the tort committee.
19 It's vital to us that we know that we have a fair process in
20 front of us.

21 And that's, by the way, one of the reasons why the
22 courts found that we had standing to be heard on this. It
23 goes fundamentally to the process.

24 Your Honor, that's all I really have to say
25 directly on Baron and Budd. I did pass to Mr. Ruggeri so --

1 we had a witness to put on. Just to comply with formalities
2 here, we would tender Ms. Moore into evidence and ask that
3 her declaration be accepted into evidence, and we offer her
4 for cross.

5 THE COURT: Does anyone have an objection to
6 Ms. Moore's two declarations being admitted into evidence?

7 MS. BEVILLE: Your Honor, the Coalition objects to
8 the admission of the declarations as evidence. The
9 declarations were filed less than 24 hours before the hearing
10 and were being touted as expert reports. And Your Honor, it
11 clearly defies compliance with any and all rules on
12 discovery, on notice, on ability to ask any questions on an
13 expert prior to the hearing.

14 There was no opportunity for the Coalition to
15 review and respond and perhaps even retain its own expert to
16 refute the conclusions that were made in the declaration.

17 Your Honor, the -- you may not have noticed, but
18 the first declaration signed by the -- by Professor Moore was
19 actually dated October 7th but was not filed with the Court
20 until October 13th and was not provided any notice to any of
21 the parties, at least to the Coalition counsel, that it was
22 going to be filed.

23 And Your Honor, this is just consistent with what
24 we've seen in the case. As Mr. Molton pointed out earlier
25 with respect to delay, the late filing discovery, Your Honor

1 noticed at the last hearing that any discovery, evidentiary
2 issues, should be dealt with right away. And I would argue
3 for reason of it being submitted less than 24 hours before
4 the hearing alone is reason to exclude those declarations as
5 evidence.

6 And beyond that, Your Honor, if you were to
7 consider the declarations, we would argue that the
8 evidentiary value should be limited. We believe the
9 declarations contain essentially legal conclusions, Your
10 Honor, legal opinions that are not based on -- there's no
11 methodology. There's simply a recitation of the rules, and
12 then Professor Moore's conclusion as to how those apply to
13 the facts of the case as interpreted by the insurers.

14 You know, the declarations violate Rule 702 as far
15 as expert testimony and the Daubert standard.

16 It's simply a statement by a professor that does
17 nothing more than recite general legal principles.

18 That is the model rule. And applies them to the
19 facts of the case.

20 Your Honor, that is squarely within the province
21 of the Court, of your determination as to how to apply the
22 law to the facts of the case. And having an expert report,
23 if you will, or a declaration of an outside counsel, we don't
24 see there being any probative value to that.

25 Moreover, Your Honor, I would note that it's the

1 declaration is based on what's entirely the faulty premise of
2 the use of ad hoc committees is improper and that ad hoc
3 committee was never properly formed as an entity or an
4 organization.

5 And in making that statement, she notes that the
6 engagement letter was not signed on behalf of the ad hoc
7 committee, cites to Rule 1.3 of the model rules, which she
8 notes typically applies to corporations and partnerships.

9 The ad hoc committee, as I noted earlier, Your
10 Honor, is not a partnership or a corporation. It's a loosely
11 affiliated group of creditors that have retained bankruptcy
12 counsel in this bankruptcy case. And so some of the
13 statements, Your Honor, are predicated on false assumptions.
14 I'm not sure how I would characterize the statements the
15 engagement letters were not signed on behalf of the ad hoc
16 committee when it was a law firm representative that signed
17 on behalf of their clients, who are the Coalition members.

18 Your Honor, she states in her declaration in my
19 opinion an informal group of 12,000 members is not capable on
20 being represented as an organization separate from its
21 individual members. It goes straight to the heart of the
22 propriety of the role of an ad hoc committee in bankruptcy.
23 It's a legal conclusion, Your Honor. It's not an expert
24 opinion based on ordinary practice in these bankruptcy cases.

25 She notes that there is almost no authority for

1 treating other informal groups as entitled to (inaudible)
2 status and notes that they're commonly applied to
3 corporations or partnerships. She focuses as Mr. Ruggeri
4 described, on the lack of a decision- making structure.

5 And here, Your Honor, was where the focus on the
6 bylaws come into play. But you know, it was noted in the
7 Washington Mutual court, the ad hoc committees are at-will.
8 The bylaws as far as how new firms are added, who comes in,
9 how are votes done, that is not what is required to be
10 disclosed under Rule 2019, and the premise of the declaration
11 assumes that bylaws are required to be disclosed, and I don't
12 think that's a determination that's been made. I certainly
13 haven't seen the case law supporting that the bylaws at ad
14 hoc committees, which frankly are optional, may or may not
15 exist in many ad hoc cases.

16 I haven't seen any cases -- certainly none that
17 were cited by the insurance companies that require production
18 of bylaws that Your Honor could change from time to time. I
19 just don't see the relevance to those here.

20 And Your Honor, it disregards the fact that even
21 the cases cited by the insurers involve ad hoc groups of a
22 multitude of mass tort victims. In each of those cases,
23 their own declaration would suggest that every single one of
24 those cases violates some other rule.

25 And Your Honor, she offers no support as to why

1 the victims here, any conflict that may exist among the
2 victims. She makes a simple statement that it rises to a
3 level that materially impaired counsel from acting. And Your
4 Honor asked the right question earlier today -- how is that
5 different from any other mass tort case?

6 And you have a declaration, Your Honor, that
7 states that as a fact. And what is the evidence cited to for
8 that fact, Your Honor? She cited to her own book. That is
9 the quote that she pulled out. It's not other cases. It's
10 not decisions by judges. It's her own assessment of how ad
11 hoc committees don't work in the bankruptcy context.

12 And Your Honor, there have been several cases
13 where Professor Moore has submitted declarations, and in
14 those cases, Your Honor, the courts, and I would request the
15 Court do here, either excluded the declaration in its
16 entirety based on the fact that they are (inaudible) legal
17 conclusions and legal arguments, or at the very least,
18 acknowledge that to the extent it is legal argument discarded
19 the value and the evidentiary nature of those declarations.

20 Your Honor, I think this goes to -- and I
21 appreciate that you're asking about the declaration, but I do
22 want to touch on the ethics point because really the
23 declaration focuses on the model rules and compliance with
24 ethics.

25 And Your Honor, I can see you struggling with and

1 how to articulate it, Rule 2019 requires disclosure, and
2 that's what the Coalition has done to date and what impact,
3 if any, the concerns raised about the engagement letters have
4 on the 2019 disclosure.

5 And Your Honor, from my perspective, it would not
6 be in an ordinary case the insurance companies that would
7 raise the issue as to whether or not there is a potential
8 ethical violation in an agreement between two consenting
9 parties. And in those cases, Your Honor, that would be an
10 ethical violation, that it is typically the client,
11 themselves, that raise the ethical violation.

12 Here, Your Honor, again, to go back to standing, I
13 don't understand and have not articulated how the insurance
14 companies have standing to raise issue with respect to the
15 validity of the engagement letters between State Court
16 counsel and their clients, especially, Your Honor, where
17 here, we have a direct line of ability between (inaudible) as
18 Coalition counsel with clients signing written
19 acknowledgements affirmative consent here.

20 So Your Honor, to the extent that there are
21 potential ethical issues, it's not a 2019 issue. What are
22 the remedies here, Your Honor? Under 2019, the remedy is
23 disclosure. I have not seen a case in the (inaudible) for
24 context or otherwise where under 2019, a court has in mass,
25 invalidated consensual attorney- client engagement letters

1 based on the attack by an insurance company. I haven't seen
2 it before.

3 And so, for these reasons, Your Honor, we believe
4 the declaration should not be admitted as evidence and to the
5 extent that it is, that the legal conclusions and the legal
6 arguments made should be disregarded by the Court.

7 I also have a number of responses to the other
8 issues raised, but I will wait for Your Honor to let me know
9 when you're ready to hear that.

10 THE COURT: Thank you. Okay. I'll hear any
11 response to Ms. Beville's objection to the entry into
12 evidence of the declaration, and then, I'll hear argument
13 from the committee.

14 MR. RUGGERI: Your Honor, James Ruggeri, again,
15 for Hartford. Thank you. With regard to the timing, I think
16 the timing of the filings, Court admonished the parties
17 earlier today, those have been coming in fast and furiously,
18 and Professor Moore was responding to the filings as they
19 were made, that we engage an expert to opine on these issues
20 comes as no surprise to anyone. We previewed that at the
21 September 9th hearing when we asked for time to consult with
22 folks on the conflicts that we saw were presented.

23 With regard to the argument that it's
24 impermissible legal opinion, we disagree. In fact, the
25 premise of the Coalition's filing last night and their other

1 papers was the sufficiency of the written consent of the
2 underlying claimants for the state court counsel to engage
3 the Coalition counsel on their behalf.

4 Professor Moore's declarations go to the
5 sufficiency of the Claimants' consent from the perspective of
6 a legal ethics expert. It's not impermissible legal opinion
7 testimony. Counsel references that Professor Moore's
8 declarations have been not accepted in other cases.

9 I don't know the other cases to which she's
10 referring. But it's clear from the resume that we submitted
11 on behalf of Professor Moore, there's a reference that she
12 has been accepted in various other cases as an appropriate
13 expert opinion and her expert opinion is appropriate in this
14 case. Again, it goes directly to the issue that was raised
15 by the Coalition at filings, including, again, last night,
16 Your Honor.

17 THE COURT: Thank you.

18 MR. SCHIAVONI: (Inaudible), Your Honor, we cite
19 specific cases, Oklahoma PAC, 122 BR 392, and in re Matter
20 FNC International, 194 -- or 1994 Bankruptcy Lexis 274 at
21 page 8, which is (inaudible). Both of those cases deal
22 specifically with how 2019 is -- although it's a disclosure
23 requirement, it's one like bankruptcy rule 2014 and 2016 in
24 that, to quote Oklahoma PAC, "The Court should also play a
25 role in ensuring that the lawyers adhere to certain ethical

1 standards. Rule 2019 was designed for such a purpose," cited
2 in our papers.

3 The FNC case similarly says that the 2019 is --
4 fits into these issues because it's to try to determine
5 whether there's actual real authority for the parties to act.
6 So we cite those cases for the support for Ms. Moore. Thank
7 you.

8 MS. BEVILLE: Your Honor, if I could please
9 respond on the two cases. The Oklahoma PAC case, Your Honor,
10 dealt with a law firm that represented two secure creditors
11 with competing liens on the same property that was being sold
12 and valued as part of bankruptcy case.

13 In that case, Your Honor, the Court said that
14 (inaudible) confirms here because the value of this property
15 becomes an issue, there will be an immediate conflict between
16 the law firm's two clients. And in that case, Your Honor,
17 the lawyer freely admitted that there was an insurmountable
18 conflict between his two clients was forced to withdraw.

19 I don't -- that case is not applicable in any
20 fashion here, and the FNC case, Your Honor, that was just
21 cited by Mr. Schiavoni. That was a law firm was filing a
22 mass proof of claim on behalf of a number of different
23 claimants and have not filed a Rule 2019 disclosure
24 statement. And again, Your Honor, the relief -- the remedy
25 in that case was disclosure under Rule 2019. Thank you, Your

1 Honor.

2 THE COURT: Is there any conflict between -- for
3 counsel for having clients on the -- as part of the Coalition
4 and clients that aren't?

5 MS. BEVILLE: No, Your Honor. The Coalition
6 represents the collective interest of the sexual abuse
7 victims, and I read in, for example, in Oklahoma, there was a
8 competing priority as to secured assets here. I don't
9 believe there is a conflict at all, certainly not one that
10 would prohibit a law firm from acting on behalf of the
11 collective interest of the sexual abuse victims. And in
12 fact, in essence, the other non-members of the Coalition
13 would essentially get the benefit of, you know, the
14 representation of the Coalition of the collective interest of
15 the members, but there's not a conflict that exists between
16 the clients themselves, Your Honor.

17 MR. RUGGERI: Your Honor, James Ruggeri for
18 Hartford, our response is potentially and very likely there
19 is a conflict, and that's presumably why the Court may have
20 raised the question because the agendas of the Coalition
21 members may be very different from the agenda of the non-
22 Coalition members.

23 We haven't yet vetted the claims, so I don't know
24 for sure, but the strength and weakness of the claims, the
25 entitlement to recover assets may you put those camps in

1 conflict, if you will, so there is definitely the potential
2 for a conflict and there very likely is a conflict, Your
3 Honor.

4 MS. BEVILLE: Your Honor, and that conflict is the
5 same that you would see in any other mass tort bankruptcy
6 where there's different levels of injuries. And here, there
7 is not a plan in place, Your Honor. There has not yet been
8 discussions about the various -- how that would even be
9 treated, and it is the agenda of the Coalition if you go for
10 equitable treatment of all sexual abuse victims.

11 And I think, Your Honor, the touting of potential
12 conflicts between the sexual abuse victims, it's a red
13 herring, Your Honor. You know, these sexual abuse victims
14 have a right to be heard. They have a right to have counsel
15 at the bargaining table.

16 They have a right to form a group to be heard, and
17 whether it's a group of 5 victims or 1000 victims or 20,000
18 victims, Your Honor, there is the ability under Rule 2019 to
19 act as an ad hoc committee. And the only requirement, Your
20 Honor, under 2019 is disclosure. And here, I submit, again,
21 that the Coalition has made all the relevant disclosures, and
22 again, Your Honor, I would like to go back to some of the
23 points that were made earlier.

24 The Coalition members are those that have signed
25 affirmative consent. There was question about, you know,

1 there being another amended 2019 and, you know, the smoke and
2 mirrors. We don't know who they represent. Your Honor,
3 there is no confusion. The additional filing that would be
4 made within seven days is just to identify the subset of
5 28,000, the 7,300 that have filed affirmative consent. It
6 would be the same names and addresses that were already
7 produced.

8 It will just be a smaller group.

9 The amended 2019 statement itself will not be
10 substantially changed, simply narrowing down the names and
11 addresses, and the only reason it wasn't filed earlier, Your
12 Honor, is just the technical issues of producing that
13 information. There --

14 THE COURT: Okay. Let me hear from Mr. Stang.

15 MR. STANG: Thank you, Your Honor. Your Honor,
16 I'm going to address one very specific issue that's come out
17 in the course of the now, let's see, two-and- a-half hours of
18 discussion. I'm not going to repeat what is in all papers.

19 But on the specific -- and then, I want to address
20 something that Ms. Beville has said, and Mr. Molton has said
21 because as someone pointed out, there's a real conflation
22 here of (inaudible) and 2019 and the motion for allowing the
23 Coalition to be (inaudible) party. But on the very specific
24 issue, when it goes to the bylaws, it's unclear who has
25 accepted these bylaws. They may exist but have the 7,300

1 people who have given the affirmative consents adopted those
2 bylaws, which might delegate authority.

3 I suspect the answer to that is no because when
4 you look at docket number 1429 at page -- I think this is 102
5 of the PDF, which is the invite to people to join the
6 Coalition, which is a vast improvement over what they did
7 before, which is opt-out. There is no reference at all to
8 bylaws.

9 And then, when you look at the new -- what do they
10 call them -- the amendment (inaudible) to the engagement
11 letters, the new law firms are referred to as new voting
12 representatives. Well, I did a word search in this document
13 to see when that phrase first arose or even voting
14 representative. And it does not appear until these amended
15 or additional law firm agreements.

16 So someone was a voting representative before
17 because when you call someone a new voting representative,
18 there must have been someone else. So A, who adopted these
19 bylaws, and B, maybe the bylaws explain who were the voting
20 representatives before since we now have new voting
21 representatives.

22 So as to the specific issues that have been
23 brought up today, I think they raise some really important
24 concerns. I'm not going to go over them again because I
25 think after two-and-a-half hours, you probably have heard

1 enough about the details of this.

2 But I do want to make a comment about Mr.
3 Molton's introduction, and some things Ms. Beville has said.
4 And again, we are conflating a lot of matters that are on the
5 agenda. And maybe we'll end up with you ruling across the
6 board at one time or another.

7 The Coalition, in their papers and in comments
8 today, have made some very, very inflammatory comments about
9 the Tort Claimants here. They have said that victims need to
10 be heard, that the parties raising these very important 2019
11 issues are trying to stop them.

12 Well, we're one of the ones who raised some
13 important issues, and the suggestion -- not the suggestion,
14 the expressed statement that we are trying to stop victims
15 from being heard is insulting. It is without any support and
16 is an attack on nine men who have spent months trying to get
17 this case in a go-forward direction.

18 And it's especially insulting when Ms. Beville and
19 Mr. Molton know that on August 21st, the TCC agreed in an
20 email to them, which they acknowledged and accepted, that
21 every one of their clients of the underlying state court
22 counsel and Brown Rudnick that at the time I think it was the
23 predecessor local counsel firm, could be mediation parties.

24 They accepted that offer and looked forward
25 working together. So how dare they say to you and to the

1 world that this committee of fiduciaries is trying to stop
2 victims from being heard? They can't accept yes for an
3 answer.

4 And so it raises the issue, really, of why the
5 Coalition. Maybe it's so that they can try to figure out how
6 to make a substantial contribution claim because otherwise,
7 we have invited them into the tent. We did it two months ago,
8 and Mr. Molton wants to talk about wasting time.

9 Given what we agreed to, they are the ones that
10 are wasting time for purposes that, frankly, I cannot
11 discern. The TCC is focused on trying to get the information
12 necessary to negotiate in the mediation, make monetary
13 demands where appropriate, and negotiate TDPs where
14 appropriate.

15 The Rule 2004 exam letter that you heard, first
16 matter on the agenda, reflects that we have spent months, in
17 fact, with the BSA, the entire case, trying to get documents.
18 And the Coalition has joined our limited 2004 exam, but the
19 idea that we are to rush to a mediation without full
20 disclosure tells me that there's a race to the bottom here.

21 No one can negotiate a case without asking for
22 insurance policies. No one can negotiate this case without
23 finding out the local council assets, restricted,
24 unrestricted. No one can negotiate this case without knowing
25 the rosters, which, amongst other things, won't disclose the

1 identity of parties are likely -- they want to be part of a
2 (inaudible) response reorganizations, local churches and
3 clubs that brought these troops into existence.

4 So I suspect this we-need-to-get-this-done-quickly
5 reflects some of the mass tort aspects of this case.

6 The final issue that I wanted to mention, Your
7 Honor, is that -- is this -- the mediator statement.

8 We were shocked that mediators who are neutrals
9 chimed in on a contested matter before you. And while there
10 was a qualification that the Coalition -- this is the
11 qualification, using the same term -- if qualified, should be
12 part of the process.

13 That qualification made go to the 2019 issue
14 that, in fact, they're advocating on an issue that is before
15 the Court. And we had hoped -- we hope they do that again
16 because we don't think it is appropriate.

17 So Your Honor, the specific issue was bylaws, who
18 are the voting representatives, and I wanted you to really
19 hear our position as you go into any additional argument on
20 mediation party that the notion that our committee is not
21 doing its job is -- I don't even have -- is so unfortunate,
22 that in an effort for the Coalition maybe to establish a
23 right to legal fees is attacking the fiduciaries in this
24 case. Thank you, Your Honor.

25 MR. MOLTON: Your Honor, it's David Molton. Can

1 I -- we conflated the mediation issues here. Can I just
2 preface a number of things and then, turn it over to
3 Ms. Beville?

4 THE COURT: No, I haven't gotten to the mediation
5 motion.

6 MR. MOLTON: Okay, that's fine.

7 THE COURT: I'm on the Rule 2019 motion. And I'd
8 like to finish that up, and then, we'll move to the next
9 motion. I don't think I'm going to rule independently
10 because I think these are intertwined. And so I understand
11 the difficulty, perhaps, in untwining them for purposes of
12 argument, but I want to make sure the 2019 issues are -- have
13 been fully vetted.

14 MR. MOLTON: That's fine, Judge. That's why I
15 asked. Thank you.

16 MS. BEVILLE: Your Honor, may I respond on the
17 2019 points? I --

18 THE COURT: Yes.

19 MS. BEVILLE: -- would appreciate (inaudible), as
20 well, I will also keep it brief.

21 Your Honor, we heard a lot from the insurance
22 companies regarding, you know, who are -- who are the parties
23 represented. I think it's clear, Your Honor, that we
24 represent the individuals that returned the affirmative
25 consents, and as of today, that number is 7,300. Your Honor,

1 as we noted earlier in the hearing, we will provide
2 supplemental updates as that number changes materially as any
3 other ad hoc committee would as their membership changes.

4 Your Honor, there's been a lot of focus on, you
5 know, the term voting representatives and the bylaws must be,
6 you know, super important because we don't know, you know,
7 the voting representatives, we don't have the empowering
8 documents.

9 Your Honor, the empowering documents are the
10 retention agreements. Bylaws are not empowering documents.
11 They don't grant authority. They may govern whether it's
12 inter-issues among representatives or what the quorum at a
13 meeting and that your vote issues, Your Honor, are not
14 necessary. And as you noted, some people may like to see
15 them, but it doesn't mean it's required under Rule 2019.

16 And again, Your Honor, I haven't seen any cases
17 where production of bylaws is required under Rule 2019 or
18 otherwise. And Your Honor, just to be clear, it is stated
19 very clearly in our engagement letter that the law firms will
20 direct (inaudible) on behalf of their clients. That is -- I
21 don't think there can be any confusion as to that statement.

22 Your Honor, the insurers, you know, said there's
23 not a need here for the ad hoc committee, and I'm not
24 understanding how that is at all relevant, the insurers' view
25 of whether or not we're necessary, how that's relevant to

1 2019, especially where we have the debtors and the mediators
2 supporting the ad hoc committee's participation (inaudible),
3 Your Honor, that's not a 2019 issue.

4 There seemed to be reference about the affirmative
5 consents and are they valid or not, and I just want to remind
6 the Court and the parties on the call here that the
7 affirmative consents do and will be monitored by the United
8 States Trustee. That was a request from the United States
9 Trustee that we agreed to. So the United States Trustee has
10 the ability to audit those affirmative consents.

11 The agreement with the U.S. Trustee also includes
12 the provision, though I don't think it needs to be stated,
13 but it is expressly stated, that the 2019 disclosure is
14 without prejudice to any parties' views, remedies, future
15 motions on any ethical issues.

16 Your Honor, Tim Kosnoff's name has had come up a
17 few times, and Your Honor, again, I'm not sure, I think the
18 mood of confusion is not a disclosure issue, it's that people
19 don't like the answer.

20 Mr. Kosnoff and Mr. Van Arsdale resigned from the
21 Coalition. They have no role on the Coalition, Your Honor.
22 They're not -- they resigned as voting representatives.
23 They're not -- they don't participate on calls. They don't
24 receive correspondence. The Eisenberg Rothweiler firm has
25 continued on as a member of the Coalition. That has been

1 disclosed. And their clients, Your Honor, have received the
2 affirmative consents. They are among the groups that are
3 responding and returning those affirmative consents.

4 THE COURT: Should it concern me that those two
5 lawyers may be calling shots behind the scenes that are not
6 disclosed?

7 MS. BEVILLE: Your Honor, there -- the engagement
8 letter identifies the co-counsel's relationships among
9 Eisenberg Rothweiler firm, and Van Arsdale and Tim Kosnoff
10 firm, so it has been disclosed, it's in the retention
11 agreement. And the unredacted version identifies and
12 discloses the (inaudible) among those law firms.

13 So I don't think that there is any more to be
14 disclosed. I am sure, Your Honor, that those attorney
15 conversations, that they have co-counsel relationships with
16 their clients. But as among the Coalition and Coalition
17 counsel, we have only had interactions with the attorneys at
18 Eisenberg Rothweiler.

19 THE COURT: Isn't that kind of artificial?

20 MS. BEVILLE: I don't think so, Your Honor. I
21 think there's, you know, there -- I don't have the -- I don't
22 see it being artificial in that we have one (inaudible) on
23 the Coalition. You have co-counsel that are not. They do
24 not participate in the discussions. They do not have a vote.

25 If there is correspondence among lawyers, you

1 know, behind the scenes, I'm sure that people all talk to
2 each other on different levels. But I don't think there's
3 anything artificial about it at all, Your Honor, and it's
4 been fully disclosed under 2019.

5 THE COURT: It's been disclosed. It's -- and I
6 don't know if the circumstances around the occurrence of the
7 resignations matter. It's certainly been disclosed. It
8 raises questions in my mind. Okay.

9 MS. BEVILLE: Your Honor, there's been questions
10 about (inaudible) engagement. I will note that the
11 affirmative consents acknowledge the (inaudible) engagement
12 and (inaudible) ratified that. The questions about divergent
13 conflicts and, Your Honor, the only conflicts that have been
14 identified that I'm aware of is potential conflicts among the
15 clients as identified by insurers that we relayed to you, the
16 victims have varied degrees of injury or harm that they
17 suffered.

18 And I would argue that that certainly doesn't rise
19 to the level of precluding participation of law firms,
20 especially in the mass tort context, Your Honor. There's
21 been no evidence that that conflict actually exists.

22 And there's been questions raised as to whether
23 the individuals are aware that the Coalition does not
24 represent them individually. And Your Honor, that was made
25 very clear in the affirmative consents that have been signed

1 by these individuals. Your Honor, I just want to note again,
2 attention's been made regarding the Kosnoff email. I just
3 want to highlight that that email predated the formation of
4 the Coalition. It was sent in June.

5 The Coalition was not formed until July 18th.
6 And whatever agenda was set forth in that email or
7 (inaudible) agenda is not, I think, at all reflective of the
8 Coalition's actions that have been taken to date. And I
9 don't see that what one attorney may have emailed, whether it
10 was a venting or something he truly believed, is not relevant
11 to the Coalition today, especially as that individual is no
12 longer a member, a law firm voting representative on the
13 Coalition.

14 Your Honor, there was also some question regarding
15 the economics of the state court counsel and I'd just like to
16 remind the Court that those contingency agreements, similar
17 to those that were requested in the Baron and Budd case, were
18 made available and I just want to make note the reason for my
19 interruption was that Mr. Schiavoni was making reference to
20 information that was filed under seal and making it now
21 publicly available, in violation of the order to file under
22 seal.

23 And just to touch on the Baron and Budd case, Your
24 Honor, the facts of that case were very different. There was
25 a lock-up agreement that was negotiated pre-petition, and

1 there did seem to be economic incentives within the plan
2 itself. I was not a party to that as Mr. Schiavoni was, but
3 that is not the case that we have here.

4 And to the extent that the mediators have had any
5 questions, Your Honor, we have been able to answer those, and
6 I have not -- there have been no discussion of economic
7 interest in the plan when especially you are here, the
8 agreements have all been disclosed, including the percentage
9 sharing between different co- counsel arrangements.

10 And I do want to just address briefly Mr. Stang's
11 comments that somehow the Coalition is dividing itself to
12 overtake TCC and its fiduciary duty. And Your Honor, we've
13 made crystal clear in our papers and any inferences by
14 Mr. Molton or I that the TCC is not a fiduciary or has not
15 been acting on behalf of the sexual abuse victims is false.
16 In fact, we recognize their fiduciary duty. We recognize
17 that they are the statutory-appointed committee representing
18 sexual abuse victims.

19 But, Your Honor, sexual abuse victims and
20 (inaudible) generally have a right to their own counsel. And
21 I don't think that that in any way is overtaking, overriding,
22 or trying to in any way undermine the TCC. In many other
23 cases, Your Honor, there are official committees and there
24 are ad hoc committees. And that is a fact of life in these
25 bankruptcy cases.

1 And I just want to note as to the agreement that
2 had been reached with counsel for the TCC on the 2019 issues
3 and participation in the cases, we have reached an agreement.
4 We disclosed that in our motions before the Court, but the
5 agreement was premised on acceptance of those terms by other
6 parties in the case, and those terms were not accepted by
7 other parties in the case.

8 And so we would find ourselves in the same
9 position today, Your Honor, had we tried to move forward
10 where the insurers were objecting to participation on behalf
11 of the Coalition and on behalf of the law firm, on behalf of
12 lots of clients, however you framed it.

13 And so it's that reason, Your Honor, that we move
14 forward filing a 2019 statement and seeking the ability to
15 appear in these cases on behalf of the Coalition, which is
16 how this group originally came together.

17 So Your Honor, and any inference, also, Your
18 Honor, about the cases moving quickly, we have been relaying
19 information received by the debtors and by the mediators.
20 There has been no need for speed, if you will, recognized by
21 the Coalition other than its time to get started on the
22 substantive (inaudible) discussions. We would like to have a
23 seat at that table, but before we can get there, we need to
24 have a ruling that we have complied with Rule 2019
25 disclosure. Thank you, Your Honor.

1 MR. STANG: Your Honor, this is Mr. Stang. I know
2 you'd like to conduct these hearings in an orderly way, but
3 something Ms. Beville just said is simply not true, and I
4 think you should know that.

5 When we -- when she acknowledged our agreement to
6 allow the law firms, including Brown Rudnick, to appear for
7 mediation on behalf of their clients and all future clients,
8 she wrote email in response. She said we accept your offer
9 on behalf of the law firms noted in your email below. We,
10 then, reserve the right for the Coalition and its members to
11 participate in the mediation.

12 But when she says that their acceptance was
13 conditional, the next sentence in her email says, we look
14 forward to receiving the TCC's mediation brief and working
15 hard to construct (inaudible) mediation parties. They're
16 only entitled to the mediation brief if they're a mediation
17 party. So their acceptance of the offer was not conditional.

18 They reserved rights to expand who the mediation
19 party was, but it was not a conditional acceptance of our
20 agreement that all of their clients be mediation parties and
21 appear through their law firms. Thank you, Your Honor, and
22 I'm sorry to do that because I know you don't like the back
23 and forth, but that was just not a true statement.

24 THE COURT: Okay. The 2019 argument is concluded.
25 We're going to take a break. Trying to see what's next on

1 the agenda.

2 MR. ABBOTT: Your Honor, Derek Abbott, it's the
3 mediation motion, docket item number 7.

4 THE COURT: Okay. We are going to an hour. I'm
5 going to try to take a quick look at what was filed last
6 night, which I haven't seen that everyone's talking about.

7 So we will reconvene at quarter to 2. We're in
8 recess.

9 (Recess taken at 12:46 p.m.)

10 (Proceedings resumed at 1:48 p.m.)

11 THE COURT: Okay, Mr. Abbott, you said we were
12 on --

13 MR. ABBOTT: I think we're up to Item Number 7 on
14 the agenda, Your Honor, which is a motion for participation
15 and mediation, again, by the Coalition.

16 THE COURT: Okay.

17 MR. MOLTON: Your Honor, that's me, David Molton
18 for Brown Rudnick on behalf of the Coalition.

19 And again, Your Honor, it's a pleasure and an
20 honor to address this Court. A lot of the issues that were
21 discussed this morning really come down to the question of
22 the Coalition's motion for participation and mediation. And
23 I'll -- I'm going to try to address those. I want to be
24 concise, Your Honor, I want to give you the facts, and I want
25 to give you answers to some of the questions as well as deal

1 with some of the attacks that were levelled against the
2 Coalition.

3 One of the first actions the Coalition took, Your
4 Honor, as to the formation -- is formation, was to request
5 participation in the mediation. Indeed, Your Honor, the
6 entire -- the Coalition's entire purpose is to advocate for
7 its members' interest in this case in order to get to a fair,
8 equitable and just resolution.

9 And the Court has made clear that all of this
10 should be negotiated through the mediation process. That's
11 an admirable goal, it's one that saves resources of the
12 Debtor and other case (inaudible), and it's one that has
13 achieved success in other mass tort cases, and I'll deal with
14 that shortly.

15 Most significantly, with the active participation
16 of ad hoc committees who may or may not be represented by the
17 creditors' committee as well who includes constituents. In
18 sum, Your Honor, when boiled down the entire morning and all
19 the arguments we heard on September 9th, really the argument
20 comes down to this one last question; whether or not we, the
21 Coalition, should be permitted to participate if a
22 significant stakeholder party in this case, any significant
23 interested party, representing significant stakeholder in the
24 mediation, that motion, Your Honor, is at 1161 of the docket
25 as we understand.

1 Your Honor, I heard a lot this morning of
2 misdirection and attack, and it's a shame that with so much
3 at stake for these young men, old men, perhaps some women,
4 that this evolved into attacks, attacks on law firms, attacks
5 on individuals, on 20-year-old cases. In any event, Your
6 Honor, the bona fides of our Coalition, the bona fides of our
7 disclosure, the work that we've done to try to get this thing
8 done properly and (indiscernible) up, Your Honor, cannot be
9 denied, as well as the work we've already done in this
10 mediation.

11 So I'm not going to utilize misdirection and
12 attack. I'm going to try and deal squarely and solely with
13 the facts. One of the things, Judge, is that, you know,
14 there's -- as Ms. Beville noted, we have 7,300 Coalition
15 members who have signed affirmative consents. That number
16 may grow. Your Honor may know that we've heard a lot from my
17 friend who represents the insurers that, oh, my God it's only
18 7,300. They had said earlier it was more. Well, the 7,300
19 isn't that much off from the 12,000 that existed when we
20 first made our motion and notwithstanding we anticipate that
21 we're going to have a lot more Coalition members with
22 affirmative consent, and with updates and filing and
23 supplements to 2019, you know, done in accordance
24 (indiscernible).

25 It seems to be, Your Honor, they're unable to

1 really address the narrative mediation. The 2019 has become
2 a club by which those objectors who stand against our
3 participation are relegated or forced to you in order to do
4 that. And that's a shame, Your Honor, because as I think as
5 Your Honor noted earlier today, and certainly I'm not going
6 to put words in Your Honor's mouth, but 2019 is a disclosure
7 item. And a lot of your questions to my friends who are in
8 the objecting side had to go with, well, how did you deal
9 with the disclosure issue? In any event, I think it's a fact
10 to realize that one of the things that is being done is
11 utilizing the 2019, you know, issue as a weapon on what is
12 the mediation motion.

13 I do want to deal, before I get into, you know,
14 the more substance of my discussion to deal with something
15 that Mr. Stang said regarding, you know, our agreement as to
16 how we would participate when we get objections to the
17 Coalition (inaudible) so. And I also want to address also
18 his, what I think is an unfortunate attack on what is a very
19 qualified and esteemed group of mediators --

20 THE COURT: Before you do, Mr. Molton -- before
21 you do, let me remind everyone, please check your phones and
22 make sure you have them muted if you are not Mr. Molton.

23 MR. MOLTON: Thank you, Judge, I appreciate that.

24 THE COURT: Thank you.

25 MR. MOLTON: And I'm getting hoarse, Judge, so

1 maybe that's a part of the problem, too. Too much speaking.
2 But Paragraph 3 of Your Honor's order which is Document 812,
3 and I'm going to read an excerpt from it.

4 Any additional party or parties who wish to
5 participate in the mediation, including without limitation
6 any additional insurers, shall be included in the mediation
7 if, one, all the mediation parties agree to include such
8 additional party or parties in the mediation, and two, the
9 mediators agree that the participation of such additional
10 party or parties if necessary would be beneficial to the
11 mediation.

12 I didn't draft this order, Judge, this was no
13 doubt done through negotiated efforts by the TCC, the debtors
14 and others, signed by you. But Mr. Stang's offer and our
15 agreement to Mr. Stang's offer didn't get us into the
16 mediation, Judge. What gets us into the mediation are all
17 the mediation parties agreeing to include such additional
18 party or parties in the mediation, as well as the consent of
19 the mediators or the agreement of the mediators.

20 When Mr. Stang made the offer, in an effort to
21 move this case along, because we also agree with the debtor
22 and with the mediators that time is of the essence. We're
23 really looking at a four-month window before things can start
24 going sideways. And that's just not just my opinion, Judge,
25 that's the opinion of a lot of folks who have done this sort

1 of case, these sort of cases for a lot of time.

2 So in any event, Judge, we did agree as Mr. Stang
3 reminded Ms. Beville, and as we actually told Your Honor in
4 our mediation motion that we would agree to a compromise.
5 That compromise was not accepted by the insurers, so we -- we
6 asked for their consent and we were told, you know, we
7 weren't given that consent. So that's why we made the
8 motion, Judge, and there's nothing bad faith about it,
9 there's nothing wrong about it. And indeed in the motion we
10 fully advised you of those facts. So I just want to put that
11 on the side, because my friend, Mr. Stang, wanted that to
12 have an emphasis added, and I just thought you should know,
13 you know, where we came from and what the actual facts on
14 the ground were.

15 And second of all, Judge, the order that the
16 parties negotiated gives the mediator standing to make an
17 assessment to give -- to make an agreement that participation
18 of such additional party or parties is necessary or would be
19 beneficial to the mediation. And they did that yesterday,
20 Judge, on a standalone pleading filed by debtor's counsel,
21 where they said the absence of the Coalition at the mediation
22 party has and will continue to hinder the mediator's efforts
23 to guide the parties to a place of consensus, the time for
24 which grows increasingly short.

25 Now, some folks may not like the fact that they

1 used the term "time grows increasingly short", or that they
2 said based on their collective wisdom and opinion, that the
3 absence of the Coalition as a mediation partner will hinder
4 the mediator's efforts, but the order itself that was
5 negotiated by, you know, no doubt one of the very parties who
6 raised the issue of the mediator's statement, really gives
7 them that ability, and if not remarkable, in cases for
8 mediators to report on these and other issues. So I just
9 wanted to get that behind us, Your Honor, because I think
10 it's important to do so.

11 Judge, taking the Court's comments to heart from
12 the last sharing where Your Honor did say at the end -- well,
13 the mediator said, I know Your Honor scolded me, because in
14 my haste I may have misspoke it, but you did say that, you
15 know, nothing you're doing is stopping us from talking to the
16 mediators, the mediators talking to them. We've been doing
17 that, Judge, and we've been continuing to share information
18 with them. We're continuing to meet their requests for
19 information, for advice and for help.

20 And in so doing, we've also done it with other
21 parties as well, Judge. We've been -- you know, with respect
22 to the debtors, as Ms. Beville noted, and last time we'd
23 given them robust data regarding, you know, at that time all
24 the Coalition, what we said at that point, the 12,000,
25 because I know people get hung up over these words. I'm not

1 going to use them, I'm just going to say the 12,000, because
2 now we've agreed, per the US (indiscernible) limit our
3 representation to those who file affirmative consent.

4 In that robust data, Judge, which described
5 counsel at which the abuse may be connected which describes
6 the individual, which describes the nature of the abuse,
7 which describes location, is exactly what is needed for the
8 mediators, the debtors and the insurers and the local counsel
9 to move forward. I do want to note, Judge, that we just
10 reached an agreement with local counsel who are interested in
11 that data as well, because we have data that can attribute
12 certain abuse claims to various local counsels and that's
13 important in how they assess going forward in the mediation.

14 So we've agreed to do that with them. And we've
15 also been in, you know, in contact with -- with other
16 parties, too, about the sharing of information.

17 Interestingly, Judge, the insurers have asked us
18 for that information. And so they want the benefit of our --
19 what we would do to participate in the mediation but without
20 giving us that seat.

21 So in any event, I must say that until our
22 position is -- certainly, we'd love to start sharing that
23 information, you know, as I mentioned before at the last
24 hearing, we're creating a database that's eminently usable
25 and deliverable and manipulatable that is going to be of

1 unbelievable value with all of these claimants' claims in it,
2 but we need a seat at the table. We can't get at this point
3 without Your Honor's help. And right now there's two
4 objectors. There's many mediation parties, but only two
5 objectors, and I'm going to get to that in a minute, but we
6 need a seat at the table. We need to be able to be privy to
7 the fulsome discussions under mediation confidentiality of
8 what's going on in that room between those three very
9 talented mediators and the various parties.

10 Other parties agree with us on that, Your Honor.
11 I'm delighted to say that the debtors from the very get-go
12 have been supportive of our efforts to join the mediation.
13 We liaise with them constantly, we discuss various issues
14 with them, we don't necessarily agree with them all the time,
15 but that's the world we're in; that's bankruptcy. But in any
16 event, I think we all have a interest in moving the case
17 forward.

18 There are other mediation parties that are subject
19 to the mediation order who are not objectors, Judge, who
20 we've also been liaising with and dealing with. The FCR, Jim
21 Patton (phonetic), the ad hoc committee of local counsel that
22 I just mentioned, as well as the non-tort UCC.

23 So in any event, Judge, it's -- I think I
24 mentioned it last time, if I didn't, I may have mentioned it
25 to somebody else. It's as if we're in this with two hands

1 behind our back and our legs tied. And people want to use
2 us, but they don't want us to be part in it, you know, part
3 of the process. So in any event, our request to be a
4 participant in the mediation that may result in a plan that
5 certainly involves our Coalition members who comprise a
6 significant portion of the pool of abuse victims is not -- is
7 not remarkable and should, under most circumstances, have met
8 little or no resistance.

9 And that gets me, Your Honor, to dealing with why.
10 Why do we have the resistance? Why do we have -- it's almost
11 like they protest too much and we've seen that, Judge, we've
12 seen the attacks, we've seen the attacks against lawyers,
13 we've seen the attacks against law firms. Interestingly, I
14 want to deal with a few things. You heard about the
15 conflicts. You know, the law firms that are associated with
16 our Coalition, you know, are leaders in national tort. Great
17 experience in NDLs, in bankruptcies, and I'm going to get to
18 that in a minute, and otherwise -- and wonderful experience.
19 No doubt that many of the parties who welcomed to the
20 mediation treasure our wonderful experience in helping attain
21 that old consensual, global resolution.

22 In any event, we've heard a little bit of what
23 really is the elephant in the room, and I just want to touch
24 on it before I go off -- go on, Your Honor.

25 But the elephant in the room, and I think it was

1 one of my insurers counsel friends, I don't know if it was
2 Mr. Schiavoni or Hartford's counsel, who basically said well,
3 you know, there's these other lawyers not in the Coalition.
4 Maybe he was referring to the ones who stand behind the nine
5 members of the TCC that had been doing this and work up their
6 cases and -- and have been in this field.

7 Well, the fact is, Judge, that the whole, you
8 know, bankruptcy of the Boy Scouts is a national case, Boy
9 Scouts is a national agency, this isn't a one-off diocese.
10 You have heard it is a national case, the opening of the
11 limitations windows and various big states with lots of
12 historical Boy Scout participation has made it a mass tort.

13 And guess what, that's what this has become. And
14 the bottom line maybe, Judge, that the folks who have been in
15 this field for a long time don't like the fact that
16 experience, sophisticated, mass tort lawyers are coming in.

17 And it's just a fact. And it's not true that the
18 folks that the -- the law firm representative associated with
19 the Coalition are new to the game. I don't think that's
20 fair. I think the folks associated with abuse in scouting,
21 you know, the Rothweiler, Eisenberg Firm have been at this
22 for 25 years.

23 Also, others in our firm have had decades of
24 experience dealing, you know, with not just national mass
25 torts, but also on occasion abuse cases, but not necessarily

1 predominantly, but clearly there's something to it that, you
2 know, hey, don't come in my sandbox.

3 And the elephant in the room is that -- and I'm
4 going to get to what -- how I think it's shown in a couple
5 minutes, but I don't think you can put that out of what's
6 going on here, especially in light of the attacks we've seen.
7 But the talent, Your Honor, that comes with our participation
8 looking why it is that so many mediation parties, including
9 the debtors and the mediators themselves say that, to use the
10 mediators' terms, our absence will hinder their efforts.

11 The talent we're bringing is pretty impressive,
12 and I'm not just talking and I don't want to toot Brown
13 Rudnick's horn, but Brown Rudnick and myself personally have
14 been involved recently and over 20 years in some of the most
15 major mass tort bankruptcies in the country and have helped
16 arrive at settlements and global resolutions that have
17 resulted in confirmed plans, both in connection with our role
18 as committee counsel sometimes, and sometimes as ad hoc
19 counsel.

20 So the fact that the Coalition decided to hire
21 Brown Rudnick is a good thing, we think, although I have
22 self-interest in saying that, but we think it's a good thing,
23 because we bring a lot of experience to the table. You know,
24 and I'm going to get to that in a minute, but also the law
25 firms who are participant -- you know, are the

1 representatives of and representing our Coalition members
2 individually have immense experience.

3 And part of that experience, Judge, goes -- you
4 know, and Mr. Schiavoni mentioned it when referring to the
5 Baron & Budd case, because these wars between the insurance
6 company and national mass tort lawyers has been going on for
7 some time. We've got lots and lots of case law about it, and
8 the bottom line is that some of the most experienced, nimble
9 and thoughtful people on how to deal with insurance companies
10 in mass tort as part of the law firms that are in our
11 Coalition.

12 And you know, we -- our Coalition law firm member
13 rep has been recently involved in (indiscernible) which
14 happened next door to you, where Judge Carey was the
15 mediator. And you know, I represented the plaintiff's
16 executive committee of the National Opioid MBL which was made
17 a mediation party, and utilizing Judge Carey and, you know,
18 with the work of many, we got to a solution. That case now
19 is with Judge Dorsey.

20 Purdue, Your Honor, has a plethora of ad hoc
21 committees, an ad hoc committee of hospitals, ad hoc
22 committee of NAS (indiscernible) plaintiff, ad hoc committee
23 of personal injury claimants, three governmental ad hoc
24 committees. We represented the ad hoc committee of what we
25 call the consenting states, that's about half of the states.

1 Municipalities including the PEC again (indiscernible), that
2 basically cuts the framework of the settlement with the
3 Sacklers and what could do in the bankruptcy.

4 As we wrote in our paper, Your Honor, Judge Drain,
5 along with all the parties, including the UCC in that case of
6 which all the ad hoc committees that I just mentioned were
7 arguably represented by -- not just arguably, they were --
8 the UCC the fiduciary, all of them, even the government
9 entities that can't sit on the UCC. The UCC is a fiduciary.

10 They all recognize the importance of -- of
11 involving all of these constituent groups in the mediation.
12 They -- some pretty talented mediators were hired, Ken
13 Feinberg and Lane Phillips, and we've disclosed in a more
14 recent paper, Judge, that the mediators issued a statement
15 that set forth in our record on September 23rd, 1920 [sic],
16 announcing much to Judge Drain's happiness, I'll say, he was
17 pleased, I would imagine, that the -- those parties had come
18 to terms at least on term sheets with respect to each of the
19 individual opioid claimants and what they would be getting
20 out of the estate.

21 I could go on, Your Honor. PG&E, another case
22 that dealt with fire victim claimants, also had mediation and
23 the TCC, there was a tort claimants can be there with --
24 together with a group of fire victim professionals were made
25 mediation parties. And that (indiscernible) by Judge Montali

1 in that mediation actually, you know, was utilized on various
2 occasions for various successes in various names.

3 So what we're asking for, Your Honor, here is
4 really not remarkable. We think constructive, we think
5 valuable. Lots of other folks in this case believe it to be
6 the case as well. And you know, unfortunately, we've had to
7 spend valuable time and resources getting to this place. And
8 I don't think Ms. Beville was incorrect when she mentioned
9 that, you know, if we had accepted the deal that Mr. Stang
10 offered which we were willing to go through, you know, as
11 noted, Judge, required to consent of all, we probably
12 would've been having the same argument.

13 I mean, you know, who can read (indiscernible),
14 but the bottom line is, we would have had to make a motion.
15 So in any event, but what -- getting back to, Judge, what the
16 nature of this case involves and why it's so important for us
17 to be here.

18 The bottom line is there's going to be a lot of
19 cases. And there's going to be a lot of claims. And that's
20 not a function of what my friends from the insurance side
21 call fake claims or ginned up claims. That has to do with
22 the fact that you've now opened windows into lots of states,
23 but also the bar date order here says, irrespective of
24 whether your state has a window or not, you're required to
25 file if you want to preserve your claim. That was the bar

1 date order that was negotiated.

2 And Judge, it should be noted, and I think Ms.
3 Beville made the point, but you know, we know -- you know,
4 what's publicly available from the -- what they call the
5 perversion files, it's not my name on it, that's the name
6 other people have ascribed to it, including I think the Los
7 Angeles Times, that there are 8,000 known predators and that
8 those files were not complete; there's more to them. And we
9 also know, I think, and I've been told and seen information
10 that, you know, with respect -- that enamored some people say
11 as much as 117 abuse incidents per predator, but even if you
12 accepted more conservative figure 10 to 20, and even in that
13 10 to 20, you knock it down to 10, you're really -- you're
14 talking about 80,000 claims.

15 So the bottom line is it shouldn't be surprising
16 under the context of how this bankruptcy came about, the fact
17 that the Boy Scouts themselves, you know, and what happened
18 there and the lack of control and the lack of supervision and
19 the folks who were allowed to come in and harm young men over
20 decades, it shouldn't be surprising that you're going to have
21 lots of claims here. And this has become much, much to the
22 chagrin of some of the folks on this Zoom room a mass tort;
23 it's just the way it's become. And that's the reality of the
24 situation.

25 In any event, Judge, I do want to note, because I

1 know that in the insurers' recent filing from last night they
2 said that the number of claims cannot be squared with what
3 existed in the court system prior to beat the BSA bankruptcy
4 or prior abuse cases. So what? Is my reaction to it.

5 And I point them up to Judge Drain's courtroom in
6 Purdue, where if you look at the amount of personal injury
7 claims in the tort system before the filing was the minimus
8 next to -- and I'm probably undercounting it, 114 -- 120,000
9 files proof of claims for personal injury in the Purdue
10 bankruptcy regarding personal injury claims that barely
11 existed in the tort system before the bankruptcy was filed.

12 So before I get to deal with each of the insurers'
13 objection, I do want to deal with another elephant in the
14 room, because it's one that I've had to deal with as
15 Coalition counsel since, you know, I first saw the pleading
16 from Mr. Stang that disclosed a June e-mail from Mr. Kosnoff.

17 From my perspective, Judge, I'm one -- and those
18 who know me know and -- and the folks I represent will tell
19 you, I look ahead. I don't look behind.

20 I don't know what happened in June that caused
21 that e-mail. Listen, I've been in the business of dealing
22 with plaintiff lawyers for over 20 years, I've seen some
23 interesting e-mails, but in any event, I'd like you to note
24 two things. First, Paragraph 37 of our pleading -- earlier
25 pleading, which is I think at 1257 on the dock -- 1257 on the

1 docket, I hope I'm not wrong on that, if so, I'll get you the
2 right one. But I'm going to quote myself because I think I
3 wrote this.

4 These cases will not move forward with insults and
5 (indiscernible) and disclosing noncurrent e-mails that may
6 more truly reflect a writer's frustration or anger of the
7 moment rather than some grand purported plan; end quote. I
8 stick by that.

9 And I also stick by, Your Honor, look at deeds not
10 words. Look at deeds, not words. Look at what this
11 Coalition has brought to this case since we first showed
12 ourselves in front of Your Honor, I think it was in response
13 to the advertising motion. They decided -- the Coalition
14 decided to get serious and they hired bankruptcy counsel who
15 has experience in this. We have weekly communications with
16 the mediators, with the debtors, with other parties in this
17 litigation -- in this case.

18 As I've mentioned before, the Coalition member
19 representatives are utilizing Brown Greer, which is going to
20 be a very helpful interface in dealing with the mediation as
21 it goes forward in dealing with claim information. That's
22 going to be one of the most valuable pieces of real estate,
23 so to say, that's going to exist in this case.

24 On the advertising motion, and I do want to
25 mention this -- and listen, I acknowledge that committees and

1 folk who are represented who are the fiduciaries of committee
2 often as Your Honor well knows disagree. Sometimes they go
3 at each other pretty hard, you know, that's not remarkable.

4 They can have different ideas. And our ideas and
5 our views, which go back to who we are and what we're about,
6 are pretty laid out in the advertising motion, Judge.

7 I think, you know, there were a few law firms that
8 came forward to object, but none of the other parties to this
9 case including the TCC, which remain silent, and I'm not
10 throwing darts, I'm not doing that, I'm just stating facts,
11 that they remain silent on it.

12 We stood up and said, hey, wait, it's important to
13 these young men to get information. It's important not to
14 chill the dissemination of free speech, you know, to the
15 abuse survivor world.

16 We were the ones who stood up, as Your Honor
17 knows, and put in principled opposition not just, you
18 can't -- you know everybody's free to do what they want,
19 not, you know, attack or misdirection of attack which is the
20 word I use, but a principled opposition to some of what the
21 debtors thought they needed. And I think Your Honor also at
22 the get-go of that hearing remarked on the record said, hey,
23 with respect to X or Y, we don't see an issue. Somebody
24 stood up and -- and it's okay that we stood up, but we added
25 value. I'm not saying that -- and I'm not trying to use that

1 in any ploy other than to say that look at our deeds, look at
2 our deeds in this case. And we worked with the debtor, we
3 worked hard with the debtor to come out with an order that
4 Your Honor signed that did address the misrepresentations
5 that were long and material and which we helped the debtor
6 with. And you know, it's -- it's our goal to continue that
7 effort.

8 Judge, again, the robust data that we provided.
9 Now, you know, I don't know if other parties in this case are
10 doing what we're doing, but they can make their own decisions
11 and that's no criticism one way or another, but it's a fact
12 that we're moving this case along.

13 Number three, there's a motion that's going to
14 happen after this motion, and I don't -- what I'm trying very
15 hard not to do, because all sorts of things came into the
16 2019 motion this morning, hearing, but the attorneys'
17 signature motion is one that our group is really thinks is
18 important, and you'll hear from my colleague, Eric Goodman on
19 that hopefully very shortly. But you know, that's a motion
20 that, again, we think eases the burden on a claimant, eases
21 the burden on victims, subscribes with the aspirational
22 statements made by the debtor the first day that all victims,
23 all victims should be heard and have a right to file proof
24 of claims.

25 And in this COVID situation, Judge, when I'm

1 sitting here in my home office for the how many hundredth
2 day, we all know how difficult it is for us professionals
3 that have unbelievable resources at our disposal to
4 communicate and do things, compared to the universe of
5 victims out there, many of whom aren't as fortunate as we
6 are.

7 So you're going to be hearing more about that, but
8 we think that, again, something we've added value to in this
9 case and has shown deeds. And again, in turning to the
10 mediator's statement, Judge, they too, think the same thing
11 that they put on the record that it would hinder their
12 efforts if we weren't involved. So dealing with what I call
13 the second elephant in the room, the Kosnoff e-mail.

14 Listen, I'm not going to sit here and make up
15 explanations for it, I wasn't there, I'm not going to make up
16 excuses for it, I can't. But I'm going to say, look what
17 we've done and look who we are now. Look at the firm
18 representative who have joined us, all of whom have qualified
19 bona fides in the mass tort bankruptcy world and in the mass
20 tort world. So that's how I tried to deal, Your Honor, with
21 some of the -- some of the things that were said earlier in
22 anticipation, but trying to really flesh out what's really
23 going on here.

24 Dealing with the substance of some of the
25 objections and I think I'm short and really Judge, I really

1 tried to be concise, you know, Century and related insurers
2 object that the Coalition's former counsel (indiscernible)
3 was conflicted. They're go on -- Stanley Tarr (phonetic) who
4 was their counsel who is no longer part of this and Rachel
5 Mersky. So I think that's gone.

6 And also, Judge, the whole issue then that was
7 raised today about conflicts among parties among the members
8 of the Coalition, sure, there may be a member of the
9 Coalition who has a different claim for damages or whatnot.
10 I don't think that really creates a conflict per se in terms
11 of the collective interests that we're -- that we're
12 representing, Judge. And I do want to say that the ad hoc
13 committee of local counsel who we've been dealing with for
14 some time arguably has the same issue.

15 They've got local counsel there who have had lots
16 of property, they've got local counsel arguably within their
17 Coalition who doesn't or has very little or no property.
18 They have local counsel which may have many claims against
19 them, they also have local counsel that may have no claims or
20 few claims against them.

21 In any event, that's a red herring it's not a
22 reason for either addressing the 2019 or putting up a
23 disqualifier with respect to our mediation motion. And
24 again, and I'll just point -- another principal argument
25 compliance with 2019 the Coalition should not be permitted to

1 participate. I think we've resolved that.

2 I think we've jumped through a lot of hoops and
3 done a lot of work and worked very hard with the US Trustee
4 and others to resolve that.

5 And again, you know, I don't think it's a
6 coincidence that the two parties who are objecting to -- put
7 in objection papers to the 2019 are the same ones that are
8 doing with our mediation motion. Hartford objects to the
9 presence of the Coalition is inappropriate, because the
10 Coalition's members interests are represented by the TCC and
11 the Coalition seeks to undermine the TCC.

12 Well, Judge, Your Honor's seen enough bankruptcy
13 cases to know that sometimes ad hoc committees get created
14 even though arguably, or in truth, their fiduciary is the
15 TCC, and they have different views and different opinions.
16 And guess what, sometimes they disagree like today on the
17 attorneys' signature motion where the TCC is, I believe,
18 taken an opposite view or sometimes they agree, like today,
19 when we did not object to the TCC's discovery motion.

20 So that's just part of bankruptcy case and there's
21 nothing (indiscernible) about an ad hoc committee that has
22 within it creditors whose fiduciary is the TCC. And again, I
23 would point you to the cases that I cited earlier that are
24 cited in our more recent ones, Purdue, certainly,
25 (indiscernible), PG&E, you know, I just want to let you know,

1 Judge, that I think at 3 o'clock today the Malencar
2 (phonetic) case has its first day hearing in front of Judge
3 Dorsey next door, arguing next door, or digitally next door.

4 And in that case, I'm honored to represent an ad
5 hoc committee of almost all the states as well as the opioid
6 PEC and walking that case into bankruptcy with an RSN.

7 And there's going to be a committee in that case
8 and that committee represents the governmental entity.
9 It's -- it's not unusual, but what it does show, Judge, is
10 that the ad hoc committee such as the one that I've been
11 given the honor to represent can be very forceful, helpful,
12 constructive party in a bankruptcy case that can lead a case
13 to resolution.

14 I think that that's been recognized here by some
15 significant mediation parties, including the debtor. I think
16 it's been recognized -- it has been recognized by the
17 mediator. And we'd ask, Your Honor, respectfully that it be
18 recognized by you as well, and that we can start the process
19 getting there, roll up our sleeves and get to work in that
20 process.

21 I do want to note that we're not there.

22 What does that mean? It just means the way,
23 Judge, and it may confound whatever deal is entered into
24 behind the cloak of mediation with our participation. And
25 certainly that's why -- that's why the majority of mediation

1 parties and the mediators themselves have recognized that if
2 we're going to do this, and if this has any possibility of
3 success of working, it will be a hindrance if the Coalition
4 is not involved.

5 So unless Your Honor has any questions, I have a
6 few more things, but I -- I don't want to repeat myself and I
7 think I've taken enough time and I think I've addresses the
8 points I've wanted to take. I appreciate Your Honor's
9 attention.

10 THE COURT: Thank you. I do not have any
11 questions. Let me hear from (inaudible) .

12 MR. SCHIAVONI: Your Honor, Tancred Schiavoni for
13 Century. If I could just get -- cut right to the chase here.
14 This motion is an enormous red herring. It's enormous. If
15 you just listen, if you took notes like I did on what was
16 just said, what you heard from Mr. Molton is that he's in,
17 quote, weekly communication with the debtors and the
18 mediator, unquote.

19 You heard him say, quote, we have been talking to
20 the mediators, comma, sharing information, closed quote. You
21 heard him say, we've been talking to the debtors constantly,
22 quote/unquote on constantly. He didn't identify a single
23 thing, anything that's been done that could have been done or
24 that he wants to do in the mediation that he hasn't done.
25 He's been an active participant, he's been talking to the

1 mediators and his lawyers, individual lawyers, if we had
2 deposed Mr. Kosnoff, you would have found that he's been
3 talking to the mediators and you'd find that Joe Rice has
4 been talking to the mediators. They've been fully engaged.

5 There is nothing -- and we said it at the last
6 hearing, the mediators are free to talk to whoever they want
7 to, they have been, they are. What is this about? Our
8 objection here was really sort of technical in nature. In
9 the protective order the Court defined the word "mediation
10 party" is a defined term. And the obligations of
11 confidentiality flow through that order.

12 We don't want highly confidential information
13 shared with people who have not submitted to the jurisdiction
14 of the Court.

15 Mr. Kosnoff and some of the others have not made
16 an appearance before the Court, they haven't submitted to
17 jurisdiction, we do not want highly- confidential information
18 disseminated to a huge group of people into an enormous group
19 of claimants for which it then ends up being used in other
20 proceedings, or it ends up being posted on the Web site of
21 the LA Times which attributes the postings to Mr. Kosnoff.
22 So that's the issue.

23 We think that if Mr. Molton had reached out to us
24 directly on this motion and met and conferred, we could have
25 basically shaped something to satisfaction, but nothing --

1 nothing prohibits him from mediating. He has been mediating,
2 he's been fully engaged on the mediation side.

3 With respect to what else you heard, Your Honor,
4 the most noteworthy thing is what you didn't hear. You
5 didn't hear any offer or explanation about anything that the
6 Coalition brings to the table that's different from the TCC.
7 You didn't hear any distinction between the client that
8 theoretically the Coalition represents and those of the
9 Coalition. And these other cases that you heard, opioids and
10 whatnot, there are subgroups which are defined subgroups
11 within the claimant groups. That's not what you're hearing
12 here.

13 What you really heard was a preview. It's a
14 preview to a motion for substantial contribution, it was a
15 substantial contribution argument; that's what you heard.
16 There's no problem with these folks talking to the mediators,
17 negotiating with the mediators, participating in the
18 mediators; that's what they've done. But there shouldn't be
19 a blanket provision of all highly confidential information of
20 anybody who claims to be under the umbrella of the Coalition.

21 With respect to what these groups -- what these
22 entities bring to the table, I mean, it's truly putting
23 lipstick on a pig to say that it's a positive for the
24 Coalition to bring to the table a group of asbestos firms
25 that have joined them. The Motley Rice Firm is the subject

1 of published decisions by the Third Circuit, by the Superior
2 Court of New Jersey, which found that Mr. Rice had
3 specifically concluded with Scott Gilbert, blowing the
4 coverage in a (indiscernible) case there. In the CE case the
5 Third Circuit specifically targeted his demands for arranger
6 fees in that case.

7 The notion of what's happened in these -- and how
8 the asbestos cases have been driven off the rails by large
9 inventories of unimpaired claims is -- is this type of --
10 it's lore in the area of mass torts.

11 That is not a positive here.

12 It is not a positive that firms have come in
13 through the Coalition that have never brought a claim against
14 the Boy Scouts ever. It's not a positive. But this isn't an
15 issue about positives or negatives, it's an issue about
16 theoretically can they talk to the mediators, can they
17 negotiate? Yeah, they have been.

18 You heard from Mr. Molton that they've been doing
19 it constantly, and he's going to continue. Nothing's going
20 to change in that (inaudible).

21 As far as if he wants some sort of modification to
22 the protective order, it's like we're happy to meet and
23 confer with him on it, but there should not be a blanket
24 turnover by his designation as a mediating party of all
25 highly confidential information to a broad group of

1 plaintiffs firms including ones that have never brought a
2 claim here and have every interest in pursuing nondebtor
3 claims against nondebtors that have nothing to do with about
4 bringing this case to conclusion.

5 And those are our concerns, we've done nothing --
6 I don't even think, frankly, the mediators understand that,
7 because they never spoke to us about it, right? In the
8 mediation statement is a statement from them that, look, if
9 they comply with 2019 we're fine with them participating.
10 But they have been participating. Your Honor, thank you.

11 THE COURT: Thank you. Jim Ruggeri.

12 MR. RUGGERI: Your Honor, briefly.

13 Hartford joins in Century's comments. Our
14 objections were fourfold in the 2019 disclosures which we
15 talked be at earlier. And as for our paper, too, the access
16 to information people not before the Court and who aren't
17 entitled to it and the potential that the access to the
18 information could be used elsewhere. Three, the concern that
19 this is an end-run around the TCC, in our view that if so,
20 that could frustrate the progress of the mediation, not
21 facilitate the progress of the mediation.

22 And I do believe Mr. Molton went too far in trying
23 to draw the analogy for the explosion in claims here to the
24 opioid situation where folks don't know they were insured.

25 These are sex abuse claims and this is a

1 defendant, the Boy Scouts who is somewhat a mature defendant
2 in the tort system. So it's not an analogous situation. In
3 my view, and we'll deal with this as we go forward, it
4 doesn't explain the unprecedented explosion in claims that
5 we've seen in this case. Thank you, Your Honor.

6 THE COURT: Thank you. Is there anyone else who
7 filed an objection? I think there's just those two.

8 MR. STANG: Your Honor, the TCC filed a pleading
9 early on.

10 THE COURT: Oh, I'm sorry. Mr. Stang.

11 MR. STANG: Thank you, Your Honor. Your Honor, I
12 have been representing committees in sex abuse cases since
13 2004, I've represented over 20 of them. And while Mr. Molton
14 may think it's disarming to call me his friend, in this
15 instance, these cases are very personal to me. And these
16 constituents are very personal to me, and when he says that
17 my non-committee members and Ms. Beville said this without
18 reservation are trying to stop victims from being heard, I am
19 not his friend.

20 The mediators chimed in in a publicly-filed
21 document, and I don't want to spend a lot of time on the
22 mediators, but they put their fingers on the scale.

23 That order did not authorize them to file a public
24 pleading, it didn't prohibit them from doing it either, but
25 it didn't contemplate it the way Mr. Molton described it. If

1 all the mediation parties agreed to admit a new member, a new
2 party, and the mediators agreed, then they're in, but I think
3 he's reading way too much into the order.

4 And Mr. Molton talks a lot about "we". And it's
5 hard to tell sometimes whether the "we" is the Coalition or
6 the "we" is the various lawyers and I thought he did a great
7 pitch. I mean, I've been through a lot of pitches, his was
8 about as good as they come.

9 But we said to him and his partner and all the
10 attorneys in August; you are welcome to come to the mediation
11 on behalf of your clients.

12 And maybe I don't understand, maybe we have two
13 elephants in the room, maybe this is the third elephant. Why
14 did they go the route they went? They wouldn't have been up
15 against the insurance companies if they had gone the path
16 that they accepted from us, by the way, without reservation.

17 But they decided to go the other way. So to me,
18 the third elephant in the room is why? And perhaps, counsel
19 for the insurers have hit upon it, that they are trying to
20 set themselves up for substantial contribution claims, which,
21 by the way, Judge, to the extent there's a reservation of
22 rights by the US Trustee regarding that, that should
23 obviously extend to everybody.

24 And this will be my last point, Your Honor.
25 Mr. Molton doesn't want to look at history, but those who

1 don't study history are bound to have it repeated. What
2 Mr. Kosnoff said in that e-mail refers to the term -- he used
3 the term "our Coalition". So his Coalition wasn't formed on
4 July 18th, it didn't spring fully formed from the head of
5 someone like a Greek God does and suddenly occur for the
6 first moment on July 18th.

7 These lawyers who were at the time the originators
8 of the Coalition sat in on committee meetings without
9 disclosing to the committee that they were -- had formed or
10 in the process of forming a Coalition that ultimately caused
11 their clients to fire them. And in one case of the two
12 committee members, there were two committee members who had
13 members of the now Coalition lawyers voting representatives,
14 and they don't represent him anymore. And it was that bad.

15 So they sat in on committee calls. The people
16 that we're being asked to deal with now sat in on committee
17 calls without telling us. Second, he advertises that they've
18 retained Brown Greer. Well, you may not know this, Your
19 Honor, but the debtor has arranged after consultation with
20 the committee to have Omni provide the exact same platform
21 that Brown Greer is going to provide to the Coalition. And
22 by the way, Brown Greer interviewed with the committee for
23 that role, Omni was picked over them. The debtor -- I don't
24 know if they talked to Brown Greer, but we told them about
25 Brown Greer, the debtor selected Omni.

1 So that's now a duplicative service, so this
2 contribution Mr. Molton talks about; already done, thank you
3 very much. And finally, Your Honor, the Coalition stood up
4 for survivors at the hearing on the false -- on the false
5 advertising. When I heard that, all I could think of, it was
6 the old joke about the orphan who kills his parents and then
7 asks for mercy from the Court. Some of the lawyers who are
8 now Coalition members were the ones who were doing the
9 advertising.

10 So you know, we rest on the papers that we
11 submitted before, but I simply could not stand by and listen
12 to Mr. Molton talk about -- and Ms. Beville talk about an
13 attack. The TCC, the attorneys who represent those members
14 in State Court who have spent, in some cases, their entire
15 professional careers protecting children. And now, Mr.
16 Molton wants to present this as effectively sour grapes. So
17 thank you, Your Honor, for your time and appreciate the
18 opportunity to address Mr. Molton's comment.

19 THE COURT: Thank you.

20 Mr. Molton, how do we address the confidential
21 information issue that Mr. Schiavoni raised in that making
22 you an official mediation party, permits access to
23 confidential information that plaintiffs' attorneys would not
24 otherwise have access to?

25 Mr. Molton, you're still on mute.

1 MR. MOLTON: Lesson of our times, Judge. Thank
2 you. One of the things that we -- why we're moving to become
3 mediation parties is we can't receive that information unless
4 we're mediation parties. That's what we'd asked the
5 mediators, we've asked others, and everybody is hesitant to
6 go anywhere close to even talking to us about it without us
7 becoming mediation parties.

8 You know, listen, there's protective orders in
9 this case, there's protective orders that have pretty firm,
10 you know, provisions in them. And we're willing to live by
11 them and abide by them. So I mean, what Mr. Schiavoni said
12 is, from my perspective, is logistics that's done in mass
13 tort cases and commercial bankruptcy cases, financial
14 bankruptcy cases, you know, we'll be able to arrive at
15 protocols in which we're going to be able to protect the
16 information from being misused. So that's my answer, Judge.

17 And also, listen, I'm not going to get into
18 responding to the attack other than to say I think what
19 Mr. Schiavoni said actually shows the fact that we should be
20 mediation parties. Yes, we've been talking, yes we hit a
21 wall, we can't go further and that's why the mediators want
22 us in. That's why the debtor wants us in. That's why other
23 parties who are significantly have interest in this case have
24 not objected, because Your Honor, my view, and my submission
25 is, you know, they understand the value we add. And again,

1 so that's it. I don't think I have to say anything else
2 unless Your Honor has any other questions.

3 THE COURT: No, I don't have any other questions.
4 Okay.

5 MR. ANDOLINA: Your Honor?

6 THE COURT: Yes.

7 MR. ANDOLINA: Hi, Mike Andolina, White and Case
8 on behalf of Debtors. May I be heard very briefly?

9 THE COURT: Yes.

10 MR. ANDOLINA: So, Judge, first, let me point out
11 that I strongly disagree with some of the comments that Mr.
12 Molton made regarding our organization. You know, one victim
13 is obviously too many, but in particular since the late 1980s
14 the Boy Scouts child protection efforts are -- have been gold
15 standard. You're also going to hear from Mr. Linder about
16 our very strong disagreement with the Coalition's position on
17 the attorney signature issue.

18 That said, Mr. Molton and Ms. Beville and their
19 team have been cooperative, they have shared preliminary
20 claims information with the debtors, and they have also
21 agreed to share that information with the local counsel.
22 Their group does include law firms with substantial claim
23 that that's just a fact. And as the debtors have said from
24 the beginning the equitable compensation of survivors is one
25 of our dual goals.

1 I will also acknowledge, and we appreciate that,
2 in particular, in the last several weeks we've had a very
3 cooperative relationship with the TCC. As our discussion
4 this morning with Mr. Morris and the ad hoc committee
5 represent, although unartful, we did reach a very important
6 agreement and we have very important discussions upcoming
7 with respect to the extension of the preliminary injunction.

8 Our view, Your Honor, is that we need to be fully
9 engaged with both of these constituencies as well as the
10 insurers and the UCC who's been involved in the preliminary
11 injunction discussion to get a deal done as quickly as
12 possible.

13 There's something that Mr. Stang said with respect
14 to the Coalition that I feel the need to push back on. The
15 timing issue from the debtor's perspective here is not a race
16 to the bottom. The timing issue is that we are an American
17 institution that needs to get out of bankruptcy. We're
18 facing a pandemic that as Your Honor knows has cut to the
19 heart of our ability to maintain membership, serve the young
20 and -- young men and women of this country, and the same
21 holds true for the local counsel.

22 So we think that this issue has been debated
23 extensively, we appreciate Your Honor's thoughtful
24 consideration of the 2019, but from our perspective, getting
25 everyone up to speed and involved in the mediation as quickly

1 as possible is paramount to getting us to where we need to be
2 preserving the mission and to making sure that survivors are
3 equitably compensated.

4 THE COURT: Thank you.

5 MR. MOLTON: Your Honor, I just got an e-mail.
6 Mr. Rice who was attacked both this morning and this
7 afternoon is online, it's a live line. He's asked me if Your
8 Honor would allow us that he have a moment.

9 THE COURT: Sure. He can have a few minutes.

10 MR. RICE: Your Honor, this is Joe Rice.

11 Can you hear me?

12 THE COURT: Yes.

13 MR. RICE: Thank you very much. I feel that
14 you've heard a lot today that is premised on people promoting
15 their own positions which is expected. I have a significant
16 history with both insurance counsel in the case as came out.

17 We have been adversaries in many bankruptcy
18 actions. And they talk about some issues from 15 to 20 years
19 ago they fail to get to the end of it. For instance, in the
20 combustion engineering the Third Circuit remanded the case to
21 the District Court and the District Court affirmed the
22 agreements. But those are historical issues.

23 What you have now is a debtor that is in dire need
24 of moving this case along. And you've got, for whatever
25 reason, it doesn't matter what they are right now, you've got

1 so much distrust between the constituencies that have to get
2 together that nothing's moving, and that's the frustration
3 that the mediators have expressed, I believe, in what they
4 (inaudible) with the Court.

5 I got involved in this, because for the last 20
6 years solving these kinds of problems is what I've done. I
7 was counsel to 20 states in the national tobacco litigation
8 and was lead negotiator for the states in that. I was lead
9 negotiator in the BP Oil spill case from Judge Barbier, and
10 was able to bring that to a conclusion within a matter of
11 months.

12 I was counsel in the Volkswagen case that led
13 those negotiations in front of Judge Byer and brought that to
14 closure. I resolved -- part of the negotiation team that
15 resolved thousands of asbestos cases against these insurers
16 and others in the Third Circuit for over 20 years. And I've
17 done many complex cases, the latest one being the Takata
18 bankruptcy where Mr. Stang was my counsel. And we have a
19 great working relationship and the adversaries in that case
20 representing the Honda Motors were counsel for the debtors
21 here, Mr. Andolina and Ms. Boelter, and I have great respect
22 for their work. So I've worked with all of these people
23 before.

24 And I think one of the reasons people ask me to
25 get involved is because I can bring some civility, hopefully,

1 to this process as well as a lot of experience in putting
2 complex cases together. And many of the members of the
3 Coalition have great experience in this litigation, but zero
4 experience in the bankruptcy world. And having the ability
5 to try to pull everybody together to get on the same page is
6 what's needed here. And that's what the Coalition is trying
7 to do.

8 And the objections from the insurers is fully
9 expected, because they know the more cases that are out there
10 and the better those cases are and the more competent counsel
11 is at the negotiating table, the more money they're going to
12 have to pay if they're going to get closure in this
13 bankruptcy suit, and they don't want to do that. And
14 that's -- I understand that's their job. But this case needs
15 to move and the only way it's going to do that is if we get
16 everybody in the same room at the same time.

17 And I think that's the frustration that the
18 mediators are begging the Court to help them accomplish,
19 because right now, for instance, we're not able to see the
20 insurance towers so we can't have an intellectual
21 conversation with the mediators about what the available
22 insurance is, because it's a confidential document.

23 None of the other parties want to talk to the
24 Coalition freely for fear that they will be challenged by the
25 insurers that they are not cooperating with the insurers or

1 somehow putting the insurance coverage at risk. And until
2 you get into the mediation you don't solve that problem.

3 So I respectfully ask you to consider what's the
4 goal in this case is and try to bring these parties together.
5 And I -- I'm not going to respond to insurance counsel's
6 personal remarks, I'd be glad to, if the Court has questions,
7 but I think my history of work in the bankruptcy courts and
8 in the courts generally speaks for itself. And I'm now
9 national lead in the opioid litigation on behalf of all of
10 the public entities, so recently appointed to that last year.
11 So I just wanted to give you my 2 cents' worth for Your Honor
12 to consider if you want to. And thank you for letting me
13 speak.

14 THE COURT: You're welcome.

15 Okay. So what's our next matter?

16 MR. ABBOTT: Your Honor on the agenda it's Item
17 Number 8, but I leave it to the Court I think that was
18 largely for the parties. I think that was largely subsumed
19 in our discussion of Number 5. So let me just ask counsel of
20 Century and Hartford if they feel like they need additional
21 arguing on that, or they believe that's been covered already.

22 MR. SCHIAVONI: I'm sorry, the agenda item
23 Mr. Abbott, is our motion to compel compliance?

24 MR. ABBOTT: It's to submit disclosure as required
25 by the rules on 2019, yes.

1 MR. SCHIAVONI: Your Honor, Tan Schiavoni. We
2 don't need to argue that separately, I think you've heard
3 argument, but I think just the important thing is that these
4 two motions do go together, and we just would respectfully
5 request if you look at the order that was entered that flowed
6 from Baron & Budd that's exhibited, because I don't think
7 the -- I think the better way to deal with this is an order
8 compelling compliance and setting a certain day. If they say
9 they've complied, so be it. But without that order, we don't
10 know whether the economic interest information in the
11 discovery -- and especially without the discovery we don't
12 know whether there's been compliance. So it approaches the
13 same problem from a different angle. And we'd ask you to
14 consider how those other courts dealt with that. Similarly,
15 the Baron & Budd court thing and the order that they entered.

16 THE COURT: Okay, thank you.

17 MR. ABBOTT: Your Honor, I think that leaves us
18 agenda Item Number 10 which is the TCC motion regarding
19 electronic execution of abuse groups of claim.

20 THE COURT: Okay.

21 MR. LUCAS: Good afternoon, Your Honor.

22 This is John Lucas, Pachulski, Stang, Ziehl and
23 Jones for the TCC. Can you hear me?

24 THE COURT: Yes.

25 MR. LUCAS: I have my hand up.

1 THE COURT: Thank you, Mr. Lucas.

2 MR. LUCAS: Your Honor, as set forth in the motion
3 the bar date order and the sexual abuse proof of claim form
4 simply requires or simply states that it needs to be signed.
5 And there's no definition of what signed means. There are a
6 variety of ways that the document can be signed, and
7 inquiries have been made to the TCC as to what it means and
8 whether or not docu-sign and the like are acceptable means of
9 executing the proof of claims. And we communicated this
10 concern to debtor's counsel, and this has been the result of
11 those discussions, Your Honor.

12 I don't think I need to go into any more detail.
13 I believe that the USC filed a limited objection to the
14 motion, and I think that the USC sort of misunderstood sort
15 of the timing requirements with respect to the subsequent
16 filing documents for the verification for those who have
17 already executed and filed proof of claims to date. And I'm
18 happy to go into the details of the mechanics of the order if
19 you'd like, Your Honor.

20 THE COURT: Well, yes. Why do people have to re-
21 execute proofs of claims that have been filed?

22 MR. LUCAS: Your Honor, I don't disagree. Your
23 Honor, I mean, this is part when we brought this issue to the
24 debtors, this motion was the result of what came out of that.

25 Originally, it's our view that proofs of claim

1 that are executed in this manner should be treated as
2 presumptively valid until somebody contests or objects
3 something like that. And so there was inconsistent
4 information coming from the debtor's side as to what's
5 acceptable and this motion is the result of trying to clean
6 that up, Your Honor.

7 I hear Your Honor's concern about -- we're not
8 asking anybody to re-execute anything. What we're asking,
9 Your Honor, is that, for example, proof of claim Number 65
10 has a docu-sign signature that that counsel supplied the
11 verification document so that Omni can sort of put it on the
12 back of proof of claim form that was filed. It's just --

13 THE COURT: What if they don't? And what if they
14 don't?

15 MR. LUCAS: Nothing in the order, Your Honor, says
16 that the claim is disallowed or anything like that. And I
17 believe, Your Honor, if that the claim was subsequently
18 objected to on that basis, I think it would be affirmative
19 defense that the objection could be rebutted by supplying
20 information of some sort of verification that the proof of
21 claim was documented or executed in a valid manner.

22 THE COURT: Okay. The reason I ask these
23 questions is because I am concerned about people who've
24 already filed their claims. And our local rules, which
25 granted is more directed toward clerk, the clerk, but we have

1 a local Rule 9011-4 which says that the filing of a proof of
2 claim electronically with the clerk shall constitute the
3 filing claim as approved signature by law. Electronic
4 claimants are not required to be registered CMESC users. So
5 again, it's really more filing it with the Clerk's Office.
6 Electronically filed proofs of claim are deemed signed when
7 electronic submission -- upon electronic submission with the
8 clerk.

9 And of course, we also have a local rule that says
10 that if there are more than 200 creditors, you have to get
11 a -- certainly have to get a noticing agent, I think you also
12 have to get a claims agent. So when you put those two rules
13 together --

14 MR. LUCAS: Your Honor, we don't disagree with
15 what you're saying, the tort claim committee does not
16 disagree with what Your Honor's saying. We understand how
17 Your Honor is connecting the dots there. And Your Honor, in
18 so far as to keep concerned we also believe that this
19 submission of proofs of claims in this manner without the
20 verification should be valid, but we were trying to reach
21 consensus among the various constituencies in this case to
22 put a process in place.

23 And so Your Honor, your comments are heard, and
24 you know, if it's up to the TCC alone, Your Honor, we're fine
25 with the way that proofs of claims are being submitted. But

1 parties are concerned and we're asking for clarification
2 about whether or not they may execute a document
3 electronically. And so because of the mixed communications
4 coming from various constituencies in this case, that's why
5 the motion was filed.

6 THE COURT: Okay. Okay, yeah, we also have a
7 local Rule 3003-1; any entity filing a proof of claim in a
8 Chapter 11 case shall file the original and one copy of the
9 proof of claim with the claims agent and shall serve a copy
10 on the Trustee, if any, unless the claims agent accepts
11 claims electronically in which case only the electronically
12 filed claim shall be submitted.

13 I think it's been -- if it's been submitted
14 electronically through -- to the claims agent, I think it's
15 been submitted. And I assume it's signed in some fashion and
16 what you're telling me what some kind of docu-sign but they
17 didn't attach the verification which, quite frankly, I didn't
18 even know there was such a thing, but okay. But the person
19 has filed it. I think to create a situation where the --
20 they have to refile something, and another document just
21 becomes confusing.

22 And I suppose if somebody wants to object to a
23 proof of claim on the basis that they didn't have the
24 verification page, I'll deal with that. But I think people
25 can hear from me that that's not going to go too far.

1 MR. LUCAS: Understood, Your Honor. So then may
2 I -- may I suggest respectfully that the proposed order if
3 the Court would consider it, would just verify that
4 electronic execution or just cite to the local rules to give
5 various counsel to survivors out there that are filing claims
6 comfort that this is going to be satisfactory rather than
7 having to do wet signatures or ink signatures whether they be
8 mailed in or electronically uploaded with the claims agent?

9 THE COURT: Yeah, we also have a rule on wet
10 signatures, and I don't think it applies to proofs of claim.
11 We've kind of carved them out as I -- I was never on the
12 Rules Committee, but we kind of carved them out, I think, to
13 make certain that parties could themselves file proofs of
14 claim, they don't have to have a lawyer, they don't have to
15 have an ECS number, they file with the claims agent. It's
16 not supposed to be a -- there's not supposed to be barriers.
17 In terms of the order -- let me see the order. Yeah, I don't
18 know what you do with the order.

19 MR. LUCAS: Your Honor, I believe what given what
20 Your Honor has said to date, I mean, this order does not work
21 it's not consistent with your concerns, I mean, it would have
22 to be revised substantially, you know, to reflect the local
23 rules that you had referenced to give parties or the
24 clarification and comfort that signed means what it means
25 under the applicable local rule that you referenced, Your

1 Honor.

2 I believe that the proposed order's going far
3 beyond what you think is necessary.

4 THE COURT: Okay. Why don't you circulate
5 something and see if there's agreement. And if there is, I
6 will probably enter it and if there's not, I'll take a look
7 at it. But in my view, parties who have filed with some sort
8 of an e-signature but it just doesn't have that verification
9 page, I don't think is -- I mean, how is that different than
10 if I sign my name on something and you don't know if I signed
11 it or didn't sign it, I signed it. So I'm not understanding
12 the issue, maybe I'm too much of a dinosaur, but I'm not sure
13 what the -- quite frankly, what the purpose of that
14 verification page is. What does it say?

15 MR. LUCAS: For example, Your Honor, I believe
16 that the -- I've seen them. The verification pages will
17 state who was the originator of the document. And so, for
18 example, Your Honor, if I represented a survivor and I send
19 out the proof of claim form for a survivor, it will state my
20 e-mail, and it will state the time of day that the e-mail was
21 sent and to whom it was sent, an e-mail the recipient and
22 when the recipient opened it up, whether the recipient
23 adopted an electronic signature or sort of scribed one into
24 the program and how it used those, and when the signature was
25 applied and when the document was sent back. And so it's

1 that trail was the type of document that we're looking to
2 attach.

3 THE COURT: The trail, okay. So it would be like
4 if I -- show my age, it would be like if I faxed proof of
5 claim form to my client and they signed it and sent it back
6 to me for filing.

7 MR. LUCAS: Right, and Your Honor, I think so. I
8 know that there are verifications to faxes, but I'm not sure
9 what they look like either so.

10 THE COURT: I know what they look like. Okay. So
11 but -- so it's that paper trail you're looking for. To me,
12 the signature's the signature or it isn't the signature. And
13 the paper trail as to how you got the signature doesn't
14 either make it valid or not valid. Maybe electronically it
15 verifies something.

16 MR. BUCHBINDER: Your Honor, this is David
17 Buchbinder. May I be heard?

18 THE COURT: Yes, please.

19 MR. BUCHBINDER: Yes, this is Dave Buchbinder on
20 behalf of the United States Trustee.

21 Given the Court's concerns about these signatures,
22 which we agree with completely from our limited objection,
23 and given that we aren't going to go back and make people
24 jump through hoops and refile claims, I'm wondering why we
25 need an order at all.

1 If someone wants to object to a claim later on and
2 challenge the verification as the Court has noted, someone
3 can do so, and if someone's used an electronic signature
4 program, presumably they could use that as part of their
5 evidence, but given the Court's comments, I don't even know
6 why we need an order at all here. The motion should either
7 be denied or simply withdrawn.

8 THE COURT: That's what I'm struggling with
9 Mr. Buchbinder. And the other thing is, obviously on a go-
10 forward basis, I don't want anybody to feel comforted that
11 they don't need to have a signature. They need to have a
12 signature. All this thing was some verification that there
13 was a signature. There needs to be signatures. We can talk
14 about who in a moment, but there needs to be a signature on
15 the proof of claim form. But when it's done electronically,
16 then it is.

17 And that doesn't bother me. So I don't want
18 people to think, oh, I don't have to worry about getting a
19 verification page, maybe they should get one just to have it,
20 but to me, it's either signed or it's not signed. And that
21 could go back to old school where you mail it to somebody
22 and -- or fax it or it can be, you know, current and
23 electronic.

24 MR. LUCAS: Your Honor, this is John Lucas. My
25 suggestion, if it works is that I can reach out to

1 Mr. Andolina and perhaps, I think, discuss some
2 very simple language, not any intention to overcomplicate
3 things, but I think really just to clarify that the use of
4 the word signed and signing in the bar date order in the form
5 so that I think people aren't left -- so that claimants and
6 their counsel aren't left to believe that it must be a
7 conventional, handwritten signature.

8 And then (inaudible) not sort of given sort of
9 comfort about sort of what's valid or not valid, you know, if
10 there's some sort of question about how or a party executed
11 the proof of claims, then that's just left for another day.

12 THE COURT: Okay. You can give that a shot and
13 I'd like you to run it past Mr. Buchbinder as well.

14 MR. LUCAS: Of course. I didn't mean to exclude
15 you.

16 THE COURT: Because the proof of claim form
17 obviously reflects the fact that they -- claims can be filed
18 electronically through the electronic filing system that was
19 set up on the Omnisite. And I assume that mostly that's the
20 preferred way is that they'd like to get them, because it's
21 probably easier for Omni than to get things through the mail.

22 But it was contemplated that things would be
23 electronically filed in the -- certainly in the form as I'm
24 looking at it. I don't know if that's reflected in the
25 order, but certainly in the form. But sure, you can do that.

1 Run it past Mr. Buchbinder.

2 MR. LUCAS: Thank you, Your Honor.

3 MS. RINGER: Your Honor, this is Rachael Ringer
4 from Kramer Levin. If I may be heard just very briefly on
5 this?

6 THE COURT: Okay.

7 MS. RINGER: Rachael Ringer from Kramer Levin on
8 behalf of the unsecured creditors' committee.

9 I will tell you, I think in response to the volume
10 of paper that has been filed on this issue, we've started
11 getting some inquiries from not only these claimants about
12 whether e-signatures are sufficient for the general proof of
13 claim forms, so I would just ask Mr. Lucas and Mr. Andolina
14 to include us in that discussion to the extent we're having
15 any order clarifying that e-signatures are acceptable for the
16 abuse proof of claim form, I would just ask that it also
17 apply for the general proof of claim form as well.

18 THE COURT: Certainly. I have to say, this is the
19 first time I'm getting this issue in any case.

20 And at this point so many proofs of claims are
21 electronically filed. So I'm a little surprised at the
22 question, but it could just be my -- like I said, my lack of
23 tech savvy.

24 MR. BUCHBINDER: Your Honor, this is Dave
25 Buchbinder again. I'm completely with you. Just because a

1 motion gets filed doesn't mean there has to be an order.
2 There's no need for an order here. It's entirely redundant
3 and utterly unnecessary given the Court's comments.

4 THE COURT: I'll give him a shot and I'll take a
5 look at what there is submitted, and I'll make a
6 determination as to whether I sign it or not. Okay, next.

7 MR. ABBOTT: Thank you, Your Honor. We've talked
8 about how things get signed, now it's time to talk about who
9 gets to sign them.

10 THE COURT: Uh-huh.

11 MR. ABBOTT: Item Number 11 is the Coalition's
12 motion for allowance of attorneys' signature, authorized
13 counsel's signatures rather than claimants' signature. So
14 back to our friends at Brown Rudnick for this one.

15 THE COURT: Mr. Goodman, try again. Yes, now.

16 MR. GOODMAN: So much for that headset, okay.

17 Good afternoon, Your Honor, Eric Goodman, Brown
18 Rudnick, counsel for the Coalition. Your Honor, I will begin
19 by stating that creditors that have legal counsel do better,
20 is it obviously true of tort claimants.

21 Before this case I served as counsel on the
22 official committee of tort claimants in the PG&E bankruptcy.
23 I helped write the claim form in that case for the fire
24 victims. Some of our committee members lost their children,
25 others lost their homes. Out of respect for them, I

1 personally made certain that the claim form complied with the
2 bankruptcy rules, that it permitted attorneys' signatures,
3 and it generally made it easier for fire victims to file
4 proofs of claim before the bar date.

5 We had a very robust turnout in PG&E; it made a
6 difference. And Your Honor, today I'm here today I think
7 fighting essentially the same battle but in a different case.
8 Your Honor, there are three bankruptcy rules in play here.
9 First, the bankruptcy Rule 3001-B that provides that a proof
10 of claim shall be executed by the creditor, by the creditor's
11 authorized agent.

12 Second, the bankruptcy Rule 9009-A which was
13 recently amended in 2017 and precludes modifications to the
14 official form other than minor changes not affecting wording.
15 The wording in the official Form 410, specifically Part 3,
16 permits attorneys' signatures.

17 Third, there's bankruptcy Rule 3001-A which
18 provides that a proof of claim shall conform substantially to
19 the appropriate official form. And again, the official Form
20 410 specifically permits attorneys' signatures. Based on
21 these rules we would expect that proofs of claim filed by
22 sexual abuse survivors in these cases could be executed by
23 authorized counsel, but there is a question as to whether or
24 not a bar date order eliminates this right. And that is a
25 problem.

1 Just for a moment, consider the logistics of
2 filing one claim which forces a victim to recount being raped
3 when they were a teenager. Now, consider filing thousands of
4 them that your clients do not get victimized again. And now
5 add to that all of the victims that may come forward in the
6 next month and retain counsel and file claims in these cases
7 that they're not left out.

8 Your Honor, we do not assume that all sexual abuse
9 survivors have computer access or iPhones. I'm sure that many
10 do, but some do not. And we have to consider victims that
11 are homeless or in prison, and we have to consider someone
12 who just hires counsel the day before the bar date. No
13 survivors should be left behind. Your Honor, the Coalition
14 first appeared in these cases after the bar date order was
15 entered.

16 Literally, I'm a stranger to it, because I was not
17 here back in May. When we flagged this issue, we asked
18 whether the debtor undertook any kind of extraordinary
19 noticing that we think would need to happen to negate a
20 bankruptcy rule. The answer appears to be no.

21 The bar date motion, as you know, was a first-day
22 motion in this case, it was noticed on a core service list.
23 That core service list did not conclude the majority of the
24 law firms that are part of the Coalition. Based on our
25 review of the debtors' affidavits of service, notice was not

1 given to over 17,000 sexual abuse victims or their legal
2 counsel.

3 Debtors say, well, Your Honor, you gave them
4 notice of the bar date. Not the point. Victims were not
5 given notice before the bar date order was entered. And the
6 bar date order creates the problem that we're trying to fix,
7 potentially.

8 THE COURT: Okay, I understand that, but -- but
9 bar date -- bar date orders, bar date motions are not
10 generally served on the entire creditor body. So I'm not --
11 I'm going to hear this on the merits, okay.

12 I'm not going to hear it based on, we didn't get
13 notice, because I think notice of the bar date motion was
14 appropriate. In fact, I can issue them ex parte under our
15 local rules if they meet certain requirements, which this
16 one, except for the fact that it's been substance deviated,
17 that met. So notice was appropriate, and now we're just
18 going to talk about this specific issue which I think is
19 worthy of a discussion. So let's just hear the specific
20 issue.

21 MR. GOODMAN: Thank you, Your Honor. So we
22 further analyzed the transcript from the May 18th hearing on
23 the bar date motion. And the statements that were made by
24 the Court seem to reflect, in our view, an expectation that
25 the bar date order would be consistent with the Bankruptcy

1 Code and the Bankruptcy Rules. That gave us some hope. And
2 to be clear, we think that there is an inconsistency.

3 Again, Rule 3001-B provides that a proof of claim
4 shall be executed by the creditor or the creditor's
5 authorized agent. That means that the creditor's authorized
6 agent should be permitted to sign the claim. Rule 3001-A
7 provides that a proof of claim shall conform substantially to
8 the official form; again, the official form permits
9 attorneys' signatures.

10 In Rule 9009-A precludes modifications to the
11 official form other than minor changes not affecting wording.

12 And again, the wording in the official form
13 permits attorneys' signatures.

14 I will note, Your Honor, that in the PG&E case
15 when the tort committee proposed a claim form for tort
16 victims, we did not try to preclude the victims from using
17 official Form 410, we just wanted a simplified form approved
18 to make it easier for victims to file claims before the bar
19 date. Simply making the request that the official form not
20 be available, of course, it was indicated the TCC's form did
21 not substantially conform to the official form.

22 We don't think that we should be in a world where
23 sex abuse victims can file a claim that conforms
24 substantially to official Form 410, complies with every
25 bankruptcy rule currently in effect can be treated as having

1 violated a court order.

2 Your Honor, we filed a motion trying to correct
3 the problem. Our solution is a very simple fix. We just want
4 an order entered clarifying that authorized counsel may sign
5 the claim forms; that's it.

6 Shortly after we filed the motion, the US Trustee
7 contacted us and asked us to withdraw the motion as quote,
8 unnecessary and moot, because the relief sought already
9 exists. He told us that the Court- approved form is
10 consistent with the official form and that the Court-approved
11 form permits signature by the claimants' legal
12 representative. We thought that is wonderful. That's how
13 sex abuse victims should be treated. The problem though, is
14 that the TCC, the debtors and the insurers vehemently
15 disagree.

16 The TCC, the debtors and the insurers assert that
17 prohibiting attorneys' signatures in these cases was the
18 product of negotiations among them. Think about that for a
19 moment. Product of negotiations among them. They, from my
20 perspective, appear proud of this. They further state that
21 they believe that it is essential that attorneys not be
22 permitted to sign claim forms, even though three bankruptcy
23 rules indicate that they can. Think about that, how could
24 that ever be essential?

25 Your Honor, if this Court understood back in May

1 that attorneys' signatures would not be permitted,
2 notwithstanding Rule 3001-A, 3001-B and 9009-A when the bar
3 date was ordered, bar date order was signed, there may be
4 very little that I can say right now that would change
5 anything, but I feel like I need to try.

6 And if it was not adequately disclosed to you and
7 the US Trustee, then let's just fix it. I'm here today to
8 simply ask the Court to make it clear that when it's the day
9 before the bar date and victims are scrambling to get
10 everything completed so that their claims are not barred,
11 that they can rely on their authorized counsel to execute and
12 file the proof of claim form for them. I think we all know
13 that if anyone comes in here late, even by one day, Century
14 and Hartford are going to strenuously object.

15 We obviously do not want fraudulent claims in this
16 case. We're not looking to make it possible for unauthorized
17 attorneys to execute proofs of claim. We are simply asking
18 that sexual abuse victims have the same rights as trade
19 creditors and bondholders in nearly every bankruptcy case
20 pending in this district to have their authorized counsel
21 sign the claim form. And if the right to have counsel sign
22 the form is going to be restricted or denied here, we think
23 that it needs to be extremely clear that this is what's being
24 done.

25 Again, the fact that the US Trustee informed us

1 that our motion is unnecessary and moot after it was filed
2 indicates to me that we need clarity on this issue. And in
3 my view, clarity means that the authorized legal counsel
4 should be permitted to execute the claim form consistent with
5 the Bankruptcy Rules.

6 Thank you for hearing me out on this, Your Honor.
7 I don't have anything further.

8 THE COURT: Thank you. Well, let me -- I did read
9 the papers. Let me hear from the objectors as to why a
10 lawyer who's authorized -- the rules speak to authorized
11 agent as to who may execute. It doesn't actually say signed;
12 that's interesting. But an authorized agent shouldn't be
13 permitted, not whether it's a good practice or a bad
14 practice, because quite frankly, as a former lawyer I never
15 did it. I don't think it's a good practice. Okay? But it
16 doesn't mean it's not -- it may not be permitted or that it
17 may not have consequences if you do, as a lawyer, sign a
18 proof of claim form.

19 And I notice that some of the cases that were
20 cited suggested that you might be able to be deposed. And I
21 don't know, because I'd never had to think about that. That
22 wasn't the reason that I didn't sign them for my clients.

23 I'll take it back, I think I did it once in an
24 emergency situation, pre-electronic filing. Pre-electronic
25 filing, okay. But why shouldn't a lawyer who has authority

1 from his client be able to sign -- why should they not be
2 able to sign the proof of claim form? Let's start with --

3 MR. LINDER: Your Honor, Matthew Linder, White and
4 Case, proposed co-counsel for the debtors. I just want to
5 start, Your Honor, by making clear that Boy Scouts of America
6 want to equitably and timely compensate survivors of abuse
7 Mr. Andolina (inaudible) that but I think it bears emphasis
8 again here in the context of executing and submitting proofs
9 of claim.

10 Your Honor, counsel referenced the three
11 Bankruptcy Rules at issue here. Rule 3001-B, 9009-A and
12 3001-A. Two of those three rules, Your Honor, came to the
13 rules coiled (phonetic), you'd have a hard time discerning
14 how the Court could approve a proof of claim form that
15 deviates significantly from official Form 410.

16 From our perspective, Your Honor, it's critically
17 important that the claimants themselves, due to the nature of
18 these claims, be the individuals to execute the claims.
19 Counsel also referenced putting survivors on the same plain
20 giving them the same flexibility to the execution of claims
21 as bondholders and commercial claimants. These claims, the
22 nature of these claims, Your Honor, could not be further from
23 a commercial claim, a bondholder claim and other similar
24 claims where you could look at a contract straight through
25 the argument, as an attorney, fairly quickly and then with

1 the reasonable belief that's what they're asking you the
2 contents of the claim, submit that claim.

3 Here, it's just not -- it's difficult for the
4 debtors to see in the explosion of claims on the part of the
5 Coalition, how that process which is required and, of course,
6 Rule 90 (inaudible) which is a rule that counsel did not
7 reference comes into play here. It's difficult to see that
8 explosion of claims how counsel could, on the one hand,
9 adequately represent interests of his clients and on the
10 other hand, be executing the volume of claims and forming the
11 belief that -- the reasonable belief that the content of
12 those claims at that rate.

13 If you do the math, Your Honor, going back to
14 August 26th, the Coalition had 12,000 claims. Today I
15 believe the Coalition is comprised of 28,000 claims. If you
16 were to do just the division, that's a rate of increase of 3
17 and a half claims per minute. To actually go through the
18 exercise, I'm assuming there are telephone calls, there may
19 be other rules by which these claims come in. They actually
20 go to the exercise that as an attorney conducting that
21 reasonable investigation of the allegations set forth in the
22 proof of claim to the extent where you're comfortable
23 executing that claim under penalty of perjury and submitting
24 that claim to us, that is a difficult proposition.

25 Counsel also suggests in its papers --

1 THE COURT: Let's explore that. Let's explore
2 that. And I also, have that concern that how many people do
3 these law firms have that are communicating with clients, and
4 so that they are comfortable that these claims are valid. I
5 have that concern, too. But you want me to assume they're
6 not doing their job. And why should I assume they're not
7 doing their job? And what does that have to do, in any
8 event, with what the Rule requires and what the Rule says?

9 MR. LINDER: Your Honor, on that point, I think we
10 just circle back to what happened preceding the hearing on
11 the bar date. This was -- this was one component of a proof
12 of claim form that was heavily negotiated between the tort
13 claimants committee, the debtors extensively over the course
14 of six plus weeks who traded numerous drafts. As you know,
15 there was a lengthy evidentiary hearing at which the TCC
16 proffered the testimony of Dr. Conte (phonetic).

17 At that hearing, counsel represented to the Court
18 that the survivors themselves had gone through the proof of
19 claim form, line by line, to ensure that every line of the
20 proof of claim form made it easier for survivors to execute
21 the claim.

22 There were no less than four versions of the claim
23 form that was submitted to the Court filed on the docket,
24 (inaudible) version all. One thing it did not change was the
25 signature requirement, because that was one point on which

1 the debtors and the tort claims committee, the fiduciary for
2 the interest of all survivors, that's one point on which we
3 agree.

4 So in the expert opinion of Dr. Conte and in the
5 view of the survivors that comprise the tort claims
6 committee, this was a component of a proof of claim form
7 that, in their view, was appropriate with --

8 THE COURT: I don't recall -- I don't recall Dr.
9 Conte testifying about signatures. I don't believe that was
10 part of his declaration. I could be wrong. But this issue
11 was not put in front of me squarely to rule on, and I do not
12 recall Dr. Conte's testimony to include who had to sign the
13 form. Am I wrong?

14 MR. LINDER: You're right. And I did not mean to
15 suggest, Your Honor, that you did squarely opine on that
16 issue. Our concern really stems from reopening this issue
17 five months after a final order was entered where despite the
18 arguments of counsel, everyone had the opportunity to appear
19 at the bar date hearing. It's argued that this was an
20 inappropriate provision of the proof of claim form. Now,
21 five months later we're faced with -- and one month out from
22 the bar date, we're faced with the request to materially
23 change the signature requirement on the proof of claim form.

24 THE COURT: Yeah, but I don't know that the
25 parties get to negotiate the signature of the form. Why do

1 the parties get to negotiate a deviation from the rule?

2 MR. LINDER: Again, Your Honor, it's really we do
3 it as a mechanism to protect the integrity of the claims
4 process. You've alluded to the case law that illustrates the
5 nature of the problem which is that by signing a proof of
6 claim form, an attorney is becoming a fact witness. They're
7 attesting --

8 THE COURT: They might be. They might be and they
9 may be subject to a deposition. So they ought to think long
10 and hard before they sign that proof of claim form. I don't
11 know, because I haven't ruled on it, but I found those --
12 whoever cited that case, it looks kind of interesting.

13 MR. LINDER: And our concern, Your Honor, going
14 back to the first statement that I made, we are focused on
15 delivering equitable and timely contribution to the holders
16 of valid survivor claims. And if you play this process out,
17 we could have thousands, maybe even tens of thousands of
18 attorneys signing proofs of claims and putting themselves in
19 a position where they could be deposed as to the contents of
20 that. I could see that very easily having -- posing major
21 issues for the administration of a potential settlement
22 trial.

23 We're focused on efficiency, we think this
24 deviation, if you will, from the default rule under official
25 Form 410 is not only permissible, we think it actually

1 advances that goal of making sure that survivors who have
2 valid claims proceed timely and equitable contribution for
3 compensation.

4 THE COURT: Okay.

5 MR. LINDER: And it's not without precedent, Your
6 Honor, I would just note parenthetically in this circuit or
7 in this district on --

8 THE COURT: What precedent is there? There were
9 orders that were submitted, I have no idea that any judge
10 actually ruled on this issue. All I got was a string of
11 orders.

12 MR. LINDER: That's right, Your Honor, it's not
13 without example is a more precise way to put it.

14 THE COURT: Okay. So there's no precedent.

15 MR. LINDER: To my knowledge, no Court has
16 considered squarely whether or not it is permissible to alter
17 the default rule on official Form 410, that attorneys be
18 permitted to sign.

19 THE COURT: Okay. Do you have anything further,
20 Mr. Linder?

21 MR. LINDER: No, Your Honor. I'd let the other
22 objectors (inaudible).

23 THE COURT: Thank you. Let me hear from other
24 objectors.

25 MR. SCHIAVONI: Your Honor, it's Tan Schiavoni for

1 Century. Rule 9009 authorizes the Court to use forms, quote,
2 with alterations as may be appropriate. There's at least two
3 circuits that have looked at that and said that's allowed
4 alterations. In re; Robins is one such case in the Fourth
5 Circuit 862 F 2d 1092. Eagle Pitcher is another case out of
6 Ohio, Rule 3001-A likewise contemplates that a proof of claim
7 form may deviate from 3001-A. It doesn't say there must be a
8 signature from an attorney, it says the Court may accept if
9 it's either the signature -- it gives the Court the option of
10 accepting the signature from the claimant or from the
11 attorney.

12 There is authority that we've cited to you of
13 other courts, in re; Arch Diocese of New Orleans is an
14 example of the Court entered an order of authorizing a proof
15 of claim form that requires the abuse -- the abuse claimant
16 to sign.

17 Another case is Arch Diocese of Harrisburg. And
18 Your Honor, you know it's plain what's going on here, it's
19 like there was a -- it's something, there was a back-and-
20 forth between the TCC and the debtors in advance of the bar
21 date order. The insurers weren't part of those negotiations,
22 I think we made clear in the bar date order. But the whole
23 bar date hearing was about, in essence, these questions that
24 are posed, are they really adequate to deliver sort of a
25 presumptive validity for these claims.

1 And the Court overruled us on that, we wanted more
2 questions, but the debtor in the TCC in advancing to the
3 Court that what it had was enough specifically pointed the
4 Court to the fact that the proofs of claim would be signed
5 under oath and that these questions would be verified under
6 oath. And Your Honor, you took note of that on the record at
7 that hearing, it's on I think Page 70, Lines 9 through 14
8 where you noted that (inaudible) proof of claim form, I can
9 look at it and understand it, it is what the claimant has
10 alleged and sort of (inaudible). And if it's signed under
11 oath and otherwise meets the requirement that it's a valid
12 proof of claim.

13 And obviously, the Court can change its mind and
14 maybe the Court meant other things, but what's more important
15 is what prompted, I believe, that comment was the back-and-
16 forth between the parties in making their presentation, the
17 debtors and the TCC were saying look, what we have here as
18 questions are adequate, because in essence, we're going to
19 get verification of the truth of the statement by having it
20 signed by the claimant.

21 And the form, that's really important, because the
22 form provides on it that the signatory -- and look, I've had
23 the same problem as Your Honor mentioned in private practice,
24 like you know, being presented with these forms at the last
25 minute and signing them and questioning myself about what I'm

1 actually verifying, but it's very different for someone with
2 personal knowledge to sign that perjury statement than
3 somebody who's an attorney, right? Because what the
4 statement says is that you as the signatory are affirming
5 with a reasonable belief that the information is true and
6 correct.

7 And but these types of claims, if the affirming
8 party is the actual claimant it has (indiscernible) to say
9 that they have a reason to belief the information is true and
10 correct. If it's the attorney, it's a totally different
11 animal, okay.

12 And if you look at if they don't have personal
13 injury of the fact. All right. If you look at this specific
14 fact we're dealing with here, if we had been able to depose
15 Mr. Kosnoff or Mr. Vanarsdale, I think one of the things we
16 would have pursued is that all of them are solo
17 practitioners, they both claim to have the largest collection
18 of claims among the Coalition.

19 Mr. Vanarsdale graduated law school in 2018, he
20 owns an advertising company, he is a solo practitioner. The
21 office he claims to have is just a storefront. With
22 Mr. Kosnoff, the only office he listed is in Houston, there's
23 another one that's in a marina in Puerto Rico. He's not
24 licensed in either of those states. One's a mail drop, the
25 other's a condo.

1 There's nobody -- any notion that there's people
2 verifying that those two lawyers are verifying the largest
3 number of claims so that they can assert under a reasonable
4 belief that they're accurate is just -- it defies ascription
5 to think that that's really what's happening here.

6 So this has -- it has impact, it has a real impact
7 on the proofs of claim, especially in the context that the
8 Court saw what the advertising has said that has led to this
9 massive increase of claims that what they've asserted,

10 Mr. Kosnoff and Mr. Vanarsdale -- not asserted, it's
11 like in their Gateway Web site where all the advertising
12 channels them is that you don't have to appear in Court, you
13 don't have to be deposed. You can remain anonymous.

14 You take away the signature requirement and it's
15 like it opens the floodgate to just about anything, okay,
16 coming in the door. And sadly, I think that's what we're
17 going to see. And I think what you had in the back-and-forth
18 in that hearing was some acknowledgment that the debtors and
19 the TCC, the TCC here wearing its fiduciary hats, they're
20 lawyers recognizing this was an important requirement and had
21 some impact here and was valuable to put in place.

22 And that's what they put in place? The Court had
23 authority to enter the order it did. I don't see, there's
24 been nothing offered that really provides a real basis to
25 reconsider that order. COVID-19 was around then, the notion

1 that signing the proof of claim provides any real barrier,
2 everybody knew that -- you know, whatever there was, no
3 evidence was put on it then. Many of the Coalition lawyers
4 were in the case at that time and didn't have anything to say
5 about it. But my goodness, like in November it's supposedly
6 80 million Americans are going to vote by signature ballot by
7 mail. There's no reason that a proof of claim signed by --
8 you know, signed should get any sort of different type of
9 treatment.

10 So we'd suggest that the Court, you know, that
11 this is, in fact, an important requirement and that watering
12 it down will open the floodgates, especially in the context
13 of the Court's order that there's presumptive validity. And
14 on the advertising, you sign, you get money, and not linking
15 that to any kind of signature under oath could have just
16 catastrophic effects here. Thank you.

17 THE COURT: Thank you. You did say, and I think
18 you said this before that the order says something about
19 presumptive validity. The order says nothing about
20 presumptive validity. I think there was something in the
21 order, I took it out. And I did so because -- at least I
22 think, if I'm wrong, people can correct me. But the Code
23 provides what the evidentiary effect of filing a proper proof
24 of claim is. I don't decide that, the Code says that and/or
25 maybe the Rules. But so I didn't deviate from the Code or

1 the Rules with respect to that.

2 And I agree, there's no new evidence, I agree that
3 this is not COVID related. People have had six months, I
4 believe, to file their proofs of claim. This is a question
5 of what the Rules require. And I think the Rule has been
6 amended since the cases that you cite were decided. The Rule
7 says right now, 9009-A; the official forms prescribed by the
8 judicial conference of the United States shall be used
9 without alteration except as otherwise provided in these
10 Rules in a particular official form or in the national
11 instruction for a particular official form.

12 Official forms may be modified to permit minor
13 changes not affecting wording or the order of presenting
14 information.

15 And then it goes on. And I'll be candid, I was
16 not -- I haven't read this rule before. So my concern is
17 that -- is that this isn't a minor change.

18 But let me hear from other objectors who might
19 want to address that. My concern is this is not a minor
20 change. I share the concerns, Mr. Schiavoni, that you've
21 raised, and that Mr. Linder has raised that -- that lawyers
22 not be signing proofs of claim forms where they have not
23 done the due diligence necessary to sign it.

24 And if you've had enough communication with your
25 client to fill out this form and the back-and-forths, I'm not

1 really sure why the client can't sign it, certainly, in some
2 electronic form as I've just indicated it's, you know -- send
3 the form to your client. And yes, I recognize there may be
4 some people who don't have access, I think that is real, I
5 don't discount that, but there may be some people who don't
6 have access to the Internet, although most people have access
7 to phones, but they may not have access to a computer,
8 certainly if they're homeless they may not have access, but
9 that is not going to be the bulk of people, I don't think.

10 So there should be a way for claimants to sign
11 these -- the proofs of claim form. And if we get a thousand
12 signatures by an attorney on proofs of claim forms filed at
13 the last minute, I think that raises questions. I just think
14 it does and we're going to have to deal with it. So I don't
15 advise that, but what I'm really struggling with is the Rule;
16 is an attorney encompassed in this authorized agent in Rule
17 3001, I guess, or is that really more thinking about how you
18 would necessarily think of an authorized agent, rather than
19 it doesn't say attorney, it says authorized agent.

20 Although I think I had the proof of claim form, I
21 don't know what I did with it, but the official form. But my
22 big concern is that it doesn't look like I'm supposed to
23 deviate from the Rule.

24 MR. GOODMAN: Your Honor, I think these two cases
25 I cited, the Diocese of Harrisburg, Mr. Ruggeri may actually

1 have the dates for it. Mr. (Inaudible) and the Arch Diocese,
2 the bulk cases in the last year to year and a half. I -- I
3 don't have the specific dates right in front of me, perhaps
4 he does, and he can tell you, but they're not agent cases.

5 THE COURT: But did they decide it? Is it just
6 orders? Because they may be like me, these judges may be
7 like me, they never read the Rule, they didn't know this rule
8 existed.

9 MR. GOODMAN: The Court had entered the orders,
10 that's possible.

11 THE COURT: Yeah. They may be better than me,
12 they may have all the rules memorized, but you know.

13 MR. SCHIAVONI: But Judge, I think the one thing
14 those courts shared in common with you is that you were asked
15 to deviate from the -- from the official form, as were those
16 courts, to put in these questions.

17 And the question is, you know, like here it was
18 very clear that like the nature of the questions were
19 dovetailing with -- the modifications allowing the questions
20 were dovetailing with the request that the order itself say
21 that the signatory be the claimant.

22 The two were tied together.

23 THE COURT: Yeah, you may not want to go there.
24 You just may not want to go there with that argument given
25 the Rule 9009.

1 MR. LINDER: Your Honor, it's Matt Linder again
2 for the debtors, if I may?

3 THE COURT: Sure.

4 MR. LINDER: You know, I would note, Your Honor,
5 that prior to 2012 it was a requirement that the official
6 Form 410 that an attorney signature be accompanied by
7 evidence of the authorization of that attorney to sign on
8 behalf of its client. The form was amended in 2012 to renew
9 that as a requirement. You know, I would suggest, Your
10 Honor, that you're inclined to grant the motion by the
11 Coalition it was -- it's removed as a requirement that proof
12 be provided, but it didn't prescribe as a fact under the
13 circumstances comparable to (inaudible).

14 So I would suggest, Your Honor, that if possible
15 the Third Circuit Law be clear here that in order to file a
16 claim on behalf of a client, an attorney needs to have
17 expressed authorization before filing the claim, or that it
18 needs to be ratification of that act prior to the bar date.
19 That's the WR (inaudible) decision that was affirmed by the
20 Third Circuit. I could give you a pin cite if you need it,
21 Your Honor.

22 It is 356 BR 302 and that was affirmed at 316
23 Federal Appendix 134.

24 THE COURT: Give me that again, 36 --

25 MR. LINDER: 316 Federal Appendix 134 is the Third

1 Circuit decision, but the underlying Bankruptcy Court
2 decision at 366 BR 302.

3 THE COURT: Okay. That's not a precedential
4 decision though, but okay. Because it's in the Federal
5 Appendix.

6 MR. LINDER: It was affirmed by the District
7 Court, Your Honor, that on the way up. But --

8 THE COURT: Sure.

9 MR. LINDER: -- in any event, we would just
10 suggest that is an alternative to assure -- to assuage part
11 of our concern.

12 THE COURT: Okay. So say that again for me. So
13 prior to 2012, the official proof of claim form required
14 proof of authorized agency be attached; is that what you're
15 saying? Did I get that right?

16 MR. LINDER: That's correct, Your Honor. That was
17 an expressed requirement as noted in parentheses right under
18 the check box as to what kind of a signer was executing the
19 proof of claim.

20 THE COURT: In the --

21 MR. LINDER: As a requirement after 2012.

22 THE COURT: Well, doesn't that tell us that they
23 wanted to make it easier?

24 MR. LINDER: I think, Your Honor, in this case,
25 you know what we've outlined in the signature box in the

1 survivor proof of claim is that the only instance where a
2 non-claimant can execute is where the claimant is deceased or
3 incapacitated or is a minor. I think my supposition, Your
4 Honor, is that Congress didn't likely have -- the Rules
5 Committee didn't have mass tort abuse cases in line when it
6 amended the Rule.

7 THE COURT: You guys just really don't want to go
8 here. You are going the wrong way on this. You are going
9 the total wrong way on this. I don't know why you don't
10 understand that. Mr. Ruggeri, do you have anything to add?

11 MR. RUGGERI: I'm a little nervous about adding
12 anything now, Your Honor.

13 THE COURT: (Laughing)

14 MR. RUGGERI: I would add, Mr. Schiavoni's right
15 with regard to the order entered in the Harrisburg case. It
16 was this year in 2020. It was this --

17 THE COURT: But did the judge who entered it -- I
18 forget who's sitting in Harrisburg now, it's not Judge France
19 anymore, it's -- but did the judge sitting there, rule on
20 this issue? Or just entered as agreed- upon order?

21 MR. RUGGERI: Yeah, I can't represent one way or
22 the other on that issue. I do think it's worth mentioning
23 that these claims are different, obviously, than your typical
24 commercial claims in that there's no requirement to provide
25 documentation which serves sort of as an evidentiary basis,

1 if you will, for your claim. And we're not going to go down
2 that path, but it's important that the one affirming that's
3 really what we have in terms of the proof of the claim.

4 Simple math. 28,000 divided by 11 firms as we've
5 heard today, it's 2,500 per law firm. And then the other
6 point I would make is, as I think the Court recognized, that
7 there's no evidentiary basis for the speculation that any
8 survivor is going to be left behind or that the survivors who
9 don't have access to iPhones or computers don't have access
10 to mail. I think that is just supposition and speculative.

11 I think that the bar date order, all of the notice
12 that's gone out is making sure that there is no legitimate or
13 alleged survivors that's going to be left behind here. And I
14 don't think we need to change the process that's put in place
15 now. What I think is important to have that, if you will,
16 affirmation by the claimant particularly the nature of these
17 claims. Thank you, Your Honor.

18 THE COURT: You know, I hear that, and I think
19 it's fair. And it concerns me if I'm going to have, as I
20 said, a thousand claims signed by a particular lawyer. And I
21 think that lawyer ought to be concerned about what impact
22 that could have on his -- on his clients.

23 MR. RUGGERI: And Your Honor, I will say -- not to
24 get ahead of ourselves, but we see how much the lawyers
25 relish being deposed. It's not easy for us to get the

1 lawyers to represent these claimants on other issues to agree
2 to sit through depositions as you are going to hear from
3 Mr. Schiavoni in a little bit.

4 THE COURT: I think that's fair, except now
5 they've signed something under penalty of perjury not just as
6 a lawyer, but they've signed something under penalty of
7 perjury. I view those as two different things which is why I
8 did not sign proofs of claim forms.

9 Mr. Buchbinder, do you as Trustee have a position?

10 MR. BUCHBINDER: Your Honor, Dave Buchbinder,
11 again, for the record on behalf of the US Trustee. And our
12 response we noted the ambiguity between the bar date order
13 and the official form, but we did not take a position on how
14 the Court should rule, but it would be helpful for the estate
15 to clarify the issue.

16 I've been working on official Form 410 as we
17 speak, too, Your Honor. An official Form 410 at the
18 signature box Part 3 says it can be signed by the creditor,
19 creditor's attorney or authorized agent, by a trustee or by a
20 guarantor, and at least the warnings or admonitions on Part 3
21 say the person completing the proof of claim must sign and
22 date it. If you file this claim electronically, FRBP 505 A2
23 authorizes courts to establish local rules specifying what a
24 signature is.

25 And finally, in bold type; a person who files a

1 fraudulent claim could be fined up to \$500,000, imprisoned
2 for up to 5 years or both, 18 USC Sections 152, 157 and 3571.
3 And that's the signature block on the official form, Your
4 Honor.

5 I would also note, and I'll ask Mr. Molton or Mr.
6 Lucas to correct me. I have the Takata case in this district
7 and I was on a special team -- or I am on a special team
8 involved in the PG&E case. And I don't recall that this
9 issue was problematic in either of those two cases, Your
10 Honor.

11 THE COURT: Okay.

12 MR. MOLTON: Your Honor, David Molton. Can I
13 respond to that?

14 UNIDENTIFIED: Your Honor, may I be heard really
15 quick? I just have a few points --

16 THE COURT: Go ahead. Mr. Lucas.

17 MR. LUCAS: Your Honor, just a couple of comments.
18 And I wanted to sort of respond to Your Honor about Your
19 Honor's reaction to the other orders that were entered in
20 other cases and where you said they were agreed orders. The
21 Movants here are treating this as if it was a surprise. And
22 I think that sort of not true. Because Mr. Kosnoff,
23 Mr. Eisenberg and Mr. Goldbar (phonetic) were all the leaders
24 of abuse in scouting were at the table and providing comments
25 literally to the proof of claim form in connection with the

1 negotiation with the final form.

2 In the end, the form was adjudicated and
3 ultimately approved by the Court in the form in which we see
4 it. But Your Honor, to single out the signature line as sort
5 of only provision, it was not a decision that was disputed,
6 but this was a package, Your Honor. This was a 12-page
7 package that was really hard fought over six to eight weeks
8 of Mr. (indiscernible) and that it is the committee -- the
9 tort claims committee finds as sort of unusual that the same
10 attorneys, not only participated in the form relation of the
11 form and approved the whole form as it went before the Court,
12 are now standing here complaining about the very thing that
13 they had approved before.

14 That's it, Your Honor. And oh, one other thing,
15 Your Honor. If you look at the claim register, the date, the
16 law firm under the Movant here, have already filed thousands
17 of these claims using electronic execution. And it doesn't
18 really seem to be a problem for them to do what they're doing
19 today. Nothing further, Your Honor, unless you have
20 questions.

21 THE COURT: Thank you. Mr. Goodman.

22 MR. GOODMAN: Yes, thank you, Your Honor. First
23 off, the question was posed about the PG&E bankruptcy case.
24 I feel like this is a bit of an unfair quiz to give to me,
25 because again, I was one of the authors contributing to

1 drafting the proof of claim in that case for the tort victim.
2 Rule 9009-A was very much a concern that we had in that case,
3 which is why, one, the attorney's signature is permitted on
4 the claim form that was approved by the Court for tort
5 victims.

6 And again, we also in the motion that the tort
7 committee filed indicated that the tort victims, if they
8 wanted to, should be permitted to use the official Form 410,
9 which, as Mr. Buchbinder just pointed out, in Part 3
10 explicitly permits attorneys or authorized agents to sign the
11 form.

12 We did look very carefully at the New Orleans
13 case. That order was actually entered two weeks ago, just
14 hours after we filed our motion on this issue. We went
15 through and we reviewed all of the pleadings in that case,
16 and we could not identify anything to indicate to us that the
17 counsel had flagged this issue for the Court. I guess on
18 that point, someone could just as easily walk into the Court
19 in the Eastern District of Louisiana and present your order
20 to that judge indicating that this is all fine and good.

21 The Arch Diocese of Harrisburg case, that order
22 actually was entered 12 days before the May 18th hearing on
23 the bar date motion. We also went through and reviewed the
24 record in relation to that order as well. And we did not
25 find any indication that this issue was, in fact, flagged for

1 the bankruptcy court in that case. The one case that we did
2 find that may be somewhat on point, there was recently a
3 published opinion entered in the Buffalo case where the Court
4 recently rejected the use of a claim form for sexual abuse
5 survivors on the grounds that it was inconsistent with the
6 official form, and therefore, violated Rule 9009-A.

7 And again, as the Court pointed out, 9009-A as
8 amended in 2017, now explicitly states that the official form
9 prescribed in the judicial conference of the United States
10 shall be used without alteration, and of course, an
11 alteration that would affect a change in wording such as
12 knocking out the explicit wording in Section 3 that permits
13 attorneys' signatures would be an impermissible change.

14 I'm not going to go back and talk about -- I'm
15 sorry, I'm blanking on their names Mr. Schiavoni probably
16 knows them better than I do. Mr. Vanarsdale and Mr. Kosnoff,
17 I just view that as a distraction, Your Honor, but I want to
18 close on this point. We are not defending anyone who is not
19 doing their job. I am not here to help anyone who is not
20 doing their job.

21 If there is improper conduct by any attorney, then
22 they're going to have to face the consequences for those
23 actions. I am simply here advocating for compliance for
24 Federal Bankruptcy Rules. And someone can take this
25 transcript and they can send it to my friend Andy Vera and

1 let him know that I stood up here today and I said these
2 things.

3 And again, it's a meaningful thing in this case,
4 you know, the statement that was made by Mr. Linder about
5 tort claimants versus commercial claimants, there's no
6 distinction in the rules, there's nothing in the rules that
7 say that they don't apply to tort victims. And again, I --
8 this may end up being a nonissue for the vast majority of
9 claimants to come in in this case, but for the ones where it
10 does matter, it matters.

11 These are victims of sexual abuse, Your Honor.
12 And if someone retains counsel just before the bar date, they
13 give them all the information, they provide them with the
14 requisite authority, and they cannot get the claim signature
15 in to the attorney in time, that attorney should be given the
16 right and should have the right to sign that claim form on
17 behalf of their client just as the Bankruptcy Rules say.

18 And again, if it matters to one person, it
19 matters. It matters. Thank you, Your Honor.

20 THE COURT: Thank you. Okay. Well, I'm going to
21 permit the signing of a proof of claim by a lawyer who is
22 authorized to do so. And I'm doing it because of Rule 9009,
23 which would seem to give me very little option on that front.
24 This does not have anything to do with there being evidence,
25 because I have none that people -- that claimants cannot

1 themselves sign the proof of claim form.

2 This was not an issue I focused on at the hearing,
3 and consistent with my ruling that a proof of claim form has
4 the effect that it has, based on the Rules in the Code. And
5 I don't make up the rules, I don't make up this rule either.
6 I don't think the parties -- I understand the parties
7 negotiated, I also understand that members who are now
8 lawyers who are now part of the Coalition may have been
9 involved in those negotiations.

10 So it does seem a little ironic and perhaps maybe
11 unfair that they're bringing the issue up now.

12 But nonetheless, I'm looking at the Rules. And
13 they permit signature by an attorney, no matter how ill-
14 advised that practice might be and no matter what consequence
15 that might have in terms of a future deposition of that
16 attorney, or what it might mean with respect to that client's
17 claim or attorney-client privilege. I am not making any
18 rulings on those, but the rule permits it. So I will.

19 And if I were that attorney, notwithstanding what
20 I just said about authorized e-signature, I'd have that
21 authority witnessed, which also might suggest that the client
22 could sign the proof of claim form. I don't know that I
23 focused on the order that was provided or that any parties
24 focused on the order.

25 Mr. Goodman, why don't you circulate that order

1 among counsel and see if there's any comment and then submit
2 it under certification, but it should be simple. It should
3 be simple.

4 MR. GOODMAN: We'll do our best. Thank you.

5 THE COURT: Thank you. * 12

6 MR. ABBOTT: Your Honor, Derek Abbott from Morris
7 Nichols again. Moving along the agenda, the next motion is
8 docket item -- excuse me, Agenda Item Number 12 which is
9 Century's motion to compel depositions. So once again, I'll
10 turn it over to Mr. Schiavoni.

11 THE COURT: Okay. I'd like 5 minutes. So let's
12 take a recess for 5 minutes, please.

13 (Pause)

14 MR. ABBOTT: Your Honor, Derek Abbott again. That
15 does bring us to Agenda Item Number 12, Century's motion to
16 compel depositions. So I'll turn it over to them.

17 THE COURT: Thank you.

18 UNIDENTIFIED: Your Honor, we brought a motion to
19 compel and then the Coalition responded to it. Also there's a
20 separate motion to quash by Mr. Kosnoff and Mr. Vanarsdale.

21 As a threshold matter, one of the most revealing
22 things here is that the motion is opposed by not really by
23 Mr. Vanarsdale but by the Coalition itself. Mr. Kosnoff and
24 Mr. Vanarsdale are founders of the Coalition. Mr. Kosnoff
25 hold themselves out as such on video that's posted on the

1 Internet but has since been taken down. This is signed
2 either he or Mr. Vanarsdale (inaudible) didn't sign the
3 stipulation that was submitted last night by the Coalition
4 that makes various assertions or makes various agreements, so
5 to speak, with the claimant that are offered to sort of
6 move the objections to their 2019 applications.

7 They represent, these two, what appears to be the
8 largest group of the Coalition claims, at least 9,000 if not
9 more claims. Each of them are solo practitioners. If my
10 fellow counsel could just put up on the video their intention
11 agreement, which is exhibited -- if you could see on there
12 they sort of held themselves out under the title of AIS, as
13 if it's sort of a law firm or not law firm but kind of like
14 an entity working for Boy Scouts.

15 They then list their current -- they list
16 themselves like large law firms often do, they list different
17 offices, like my firm has Chicago, New York -- -- I guess we
18 don't have Chicago, but we have Los Angeles, New York. They
19 list themselves that way as if they're all members that
20 they're sort of separate offices of AIS, but and then they
21 describe the firm as Kosnoff and ABA group with comments
22 between them basically one law firm or one entity. But in
23 fact, it's three separate firms with three separate groups of
24 claimants with Kosnoff and Vanarsdale having the largest
25 group.

1 Not only did they not find the stipulation that
2 was submitted last night and they say that claimants still
3 part of the Coalition just that they've resigned. But they
4 haven't disclosed what they resigned from, okay. They
5 have -- none of the documents explain what, quote, positions
6 they had with the group. That suggests to us that key
7 documents about how the Coalition is organized, and the
8 financials haven't been disclosed. Because they've asserted
9 that they're not, quote, members in the first place. So the
10 resignation would have sort of impact.

11 The other thing they haven't disclosed are the co-
12 counsel agreements through which they can represent clients
13 in states other than where they are located. Critically,
14 Mr. Kosnoff lists his office, you'll see in that letter,
15 Puerto Rico. And on his Web site he puts Houston. Neither
16 of those -- we sent private detectives to the Houston office,
17 and we also sent servers to the Puerto Rico place. Puerto
18 Rico is a marina where they're selling like maybe condos.
19 And the fact -- but it's not a law office, so to speak, even
20 though it's listed as such, it's held out to the public as
21 such.

22 The Houston address is just a mail drop.

23 It doesn't appear that they're members of the bar,
24 Mr. Kosnoff, in either of those locations where they hold
25 themselves out as having offices. It's illegal in Texas to

1 hold one's self out for a Texas office as being a practicing
2 member of the Bar when they're not. I think the Rule's going
3 to be the same in Puerto Rico or certainly kind of a concern.

4 In Mr. Vanarsdale's case, he -- as I indicated,
5 indicates that on his Web site that he graduated the Bar in
6 2018. He represents these (inaudible) in these ads thousands
7 and thousands of claimants, but there's no record of him ever
8 trying a case or actually doing -- personally appearing in
9 any kind of action. When you run a search on him, it comes
10 up that he does own an advertising company, and he's owned it
11 for years. So it appears to really own the advertising
12 company that has run a lot of the ads, which the ads have
13 been run themselves.

14 The (indiscernible) that the e-mail that we had
15 from Mr. Kosnoff makes a number of assertions that indicate
16 that there's a range of voting lock-up agreement that he
17 somehow controls it, that he's deployed that in various ways
18 and he proposes to deploy it. We've heard all kinds of mea
19 culpas about that e-mail today and suggestions about what it
20 is and what it isn't. But without deposing Mr. Kosnoff,
21 these are just -- you know, it's just lawyer advocacy, okay.

22 It's like all of that material is relevant
23 directly to their 2019 submission, you know, speaking of
24 whether or not they've -- because their clients are both
25 members of this group. And you could apply each of those

1 elements of 2019 to them and say how -- how do they qualify,
2 and it's clear there's information missing with respect to
3 (inaudible).

4 We made efforts -- when we went to the Coalition
5 and said we want to depose them, we were told first, like
6 gee, they're not parties, you have to subpoena them. They
7 gave us addresses. The address turned out -- we got the
8 Houston, turns out to be a mail drop, (inaudible) serve them.
9 Mr. Vanarsdale addresses a storefront in San Diego that we
10 were given by the Coalition and it's closed. There's nothing
11 there.

12 We also sent someone by what appears to be his
13 home, and no one would come to the door. So either he's not
14 really there or he sort of ducked service. Since then, they
15 filed a notice of appearance through David Wilks stating in
16 the notice, that they're, quote, parties of interest in the
17 case in which -- and they are. I mean, they're -- the
18 submission of their letter agreement indicates that they hold
19 a very significant dollar amount of the claim of the
20 claimants themselves and they have a huge financial interest
21 in these claims.

22 They cited case law on the motion to dismiss that
23 says you don't need a subpoena for someone who is a party in
24 the case. They themselves filed something saying they are a
25 party. So we thought the notice that we served was adequate

1 in light of that filing.

2 Mr. Wilks is a terrific lawyer, we met and
3 conferred with us on this, but what I would -- and he will
4 make a long presentation about how somehow we delayed in
5 deposing Mr. Kosnoff, et cetera, but here's the bottom line.
6 It was obviously after the last year that the 2019 had to be
7 amended. We knew it was going to be amended, and we made it
8 clear that we wanted to depose Mr. Kosnoff after it was
9 amended. What the Coalition did was, they purported to offer
10 us a date before they filed the 2019 amendment so that would
11 have made the deposition -- it would have completely
12 frustrated the deposition to depose these fellows without the
13 amended statement.

14 But besides that, you know, the other thing that
15 happened was they hung all kinds of conditions on them
16 appearing, that we had to almost essentially give them the
17 question outline of what we were asking about. When, look, if
18 we ask anything privileged it was, you know, clearly, they're
19 lawyers, they're all lawyers.

20 They could have invoked privilege and we could
21 move on, but they wanted agreements on that up front. But
22 the main thing here was we needed (inaudible) after we got
23 the amendment.

24 The Coalition waived it until the very last day to
25 make that amendment. They made it (inaudible) when otherwise

1 briefs were required before this hearing, they then -- we
2 went back to them and said in advance of that notice that
3 they -- for the Friday after when we suspected they would
4 file it, which was the last day.

5 Then they told us, no, he's not going to appear
6 and that's when, you know, we moved immediately to compel,
7 they moved to quash.

8 The information on this is -- it goes beyond --
9 it's important. It goes to like the substance of the
10 (inaudible) really, ultimately where the case would go. And
11 it's essential for the 2019 issue.

12 Whatever the Court decides to do with the 2019
13 issue with, in a sense, the larger Coalition, it's -- a
14 deposition with respect to these two fellows is key with
15 respect to their 9,000 claims that are in the Coalition.

16 I would tell you, Your Honor, that it's important
17 to whether or not the Coalition 2019 should be allowed to go
18 forward. Again, we don't want to hold up anything in the
19 mediation, the Coalition lawyers, the individual -- they're
20 all talking to the mediators, that can continue. If you want
21 a stipulation that somehow (indiscernible) we'll even engage
22 in that. But that is -- it's a total red herring that any of
23 this is holding up the mediation.

24 In the entire history of the mediation I've had
25 three audiences with the two mediators, both very short. And

1 it's, you know, we are not in weekly contact like Brown
2 Rudnick is with the mediators. They are fully exercising
3 their ability to talk to them. I would ask that we could be
4 permitted to go ahead with the depositions and that
5 Mr. Kosnoff disclose where he is, because we have -- we have
6 sent servers through the Caribbean.

7 We actually thought we might catch him because
8 he's alleged to be on a very large boat in the Caribbean. We
9 thought we might catch him in a port in Puerto Rico, but he
10 eluded us, I think, in that regard. But we'd depose him in
11 person or if he has COVID concerns, we could do it, you know,
12 electronically. But we ask your permission to go forward
13 with that. Thank you, Your Honor.

14 THE COURT: Okay, thank you. Mr. Wilks.

15 MR. WILKS: Thank you, Your Honor. I'd like to
16 start by addressing some questions that I think were
17 bothering Your Honor this morning. Your Honor pondered
18 questions about what precipitated Mr. Kosnoff and
19 Mr. Vanarsdale to resign from the Coalition? And were those
20 resignations bona fide, were they legitimate? I've been
21 waiting for hours, Your Honor, to answer those questions and
22 I'd like to do that right now.

23 This case is about victims, Your Honor, this case
24 is about victims of sexual abuse that had occurred to
25 children; that's what's important in this case. The insurers

1 have seized upon a confidential e-mail which never should
2 have been made public, which expressed an attorney's views on
3 how to best advance his client's interest. And this morning
4 Your Honor said there's nothing nefarious about that. That's
5 what we're all supposed to do for a living.

6 I mean, smart lawyers, experienced lawyers,
7 aggressive lawyers should in every complex case have
8 different views and air them. And good lawyers do air their
9 viewpoints with each other, at least I hope they do, because
10 we're supposed to do that.

11 Well, here, the insurance companies have seized on
12 that as some sort of smoking gun of some sort of awful
13 intent. And they're using that and my clients as time-
14 wasting distractions, Your Honor. Seeing that that's what
15 the insurance companies are doing, putting their clients
16 first, the victims in this case first, my clients took
17 themselves out of the equation.

18 If they're the ones that are getting in the way of
19 progress towards a 2019 statement being approved, they'll
20 step aside and they'll get out of the way, and that's what
21 they did. They put their claimant clients first.

22 Your Honor, you've heard a lot today, it's
23 imperative that we get in case moving toward a resolution, an
24 effective mediation is imperative to help that along. My
25 clients took themselves out of the way. They resigned from

1 the Coalition. That's why they resigned and they're not
2 going to call the shots from behind some curtain somewhere,
3 because that might frustrate that purpose. They are not on
4 the Coalition's calls, they don't participate in Coalition
5 correspondence, they have no voting authority, they're not
6 calling the shots for anyone except their clients.

7 Make no mistake, Your Honor, of course, these are
8 advocates, these are lawyers in a case. They will continue,
9 of course, to represent their clients. They're not going to
10 be calling the shots for anyone else's clients. So I hope
11 that puts Your Honor's questions to rest, because that's
12 exactly what's going on here.

13 Mr. Schiavoni seems to give me a lot more credit
14 than I'm entitled to, I think. He thinks that I've
15 coordinated all this with the Coalition and timed it with the
16 filing of an amended 2019 statement. I had nothing to do
17 with that. I've never represented the Coalition; I've never
18 done anything for the Coalition.

19 I represent two individuals, and those two
20 individuals are lawyers in this lawsuit who have been sort of
21 targeted now for deposition as a sideshow.

22 The timing of the depositions -- I offered my
23 clients for deposition. I gave dates certain and times
24 certain for Mr. Schiavoni to take those depositions. I took
25 it upon myself to lay out some ground rules so that we

1 wouldn't have one of these obnoxious depositions that we all
2 know about where everyone is asking questions that call for
3 privileged information or confidential information. They're
4 instructed not to answer, transcripts and videotapes go to
5 the Court, it's a wasteful exercise.

6 So I laid out what I thought was a great set of
7 boundaries for a deposition. I put them up on dates and
8 times certain. And the insurance companies ignored it. They
9 completely ignored that. They didn't respond at all. The
10 day before the first date that I had offered, I reached out
11 to them, said hey, I assume you're not going forward. And by
12 the way, as you know, my guys had resigned from the Coalition
13 so there's really no reason to go forward anyway.

14 It was then that we restart this conversation.
15 But it seems clear, Your Honor, these are not depositions
16 that the insurance companies actually subsequently want to
17 take. And I'll kind of tell you why I think that. There's a
18 few reasons. First and foremost, the first time they
19 demanded the depositions before I was involved in the case,
20 which is the reason I became involved in the case, they asked
21 for depositions on the Friday -- the Friday evening of Labor
22 Day weekend and noticed them for the day after Labor Day.

23 So you get it on Friday night of a holiday
24 weekend, you're supposed to show up for a deposition on that
25 Tuesday. That's just not a serious way to proceed if you

1 actually do want to take a deposition. At least that's not
2 the way I've ever practiced in my 30 years. I've never seen
3 anybody else do it that way either.

4 Your Honor, in short really, the recitations in
5 this lengthy, lengthy motion to compel really have nothing to
6 do with what's at issue before you, Your Honor. The
7 Coalition's amended 2019, I think there's been a supplement
8 to seem to answer all the questions that were raised in the
9 motion to compel. There's a lot of innuendo about unethical
10 conduct, I think that 2019 answers that also. So really
11 here, there's lots of distracting extraneous debris on the
12 road to keeping this thing moving forward.

13 Century wants desperately, it seems, to delay
14 these proceedings and keep the Coalition from participating
15 in the mediation; that's above my pay grade. I don't have
16 anything to do with that. What I have to do with is the
17 propriety of deposing opposing counsel in a case; that's what
18 this is about. There seems to be some question of whether or
19 not Mr. Kosnoff and Mr. Vanarsdale are actually opposing
20 counsel to the insurance companies.

21 Well, listening to this today and the way that my
22 clients have been kind of run up and down, it sure seems like
23 these are my opponents, Your Honor. It seems pretty
24 adversarial to me. I don't think there could be really any
25 question about it.

1 The case law is actually quite instructive, Your
2 Honor, to depose opposing counsel, which is what these two
3 witnesses are, Century must meet some requirements. They
4 have to come forward with a showing, why? Because this is
5 what the courts call it, these are the drastic measure. Now,
6 I think that's very important to recognize that. This isn't
7 just a deposition. We're allowed a Notice of Deposition
8 under Rule 30 and you'll get some facts from a witness.

9 These are opposing counsel. And much has been
10 made of the Baron & Budd decision today, Your Honor, and even
11 Mr. Rice spoke this morning -- well, maybe this afternoon.

12 The Baron & Budd decision has nothing to do with
13 whether or not opposing counsel should be deposed. Mr. Rice's
14 deposition wasn't the subject of that opinion. Really, scope
15 and discovery in the 2019 setting really wasn't discussed too
16 much. The question was whether or not engagement letters
17 should be disclosed. And that court said, yeah, sure, you
18 need to disclose engagement letters. Well, that's not really
19 at issue here, I don't think anymore, Your Honor, because I
20 think Your Honor's already cleaned that up at the last
21 hearing back in September.

22 So what really are we talking about here? Well,
23 there's three factors that Your Honor is, as the case law
24 suggests, Your Honor, should take into account. The first one
25 is the importance of the information to a central issue

1 before the Court. How important is the information that
2 Century seeks here to an issue that's actually before Your
3 Honor? That's the first consideration.

4 The second one is, are there -- is that
5 information available from less-intrusive sources? And the
6 third one is, what harm might befall the victims'
7 representational rights? Well, if we walk through
8 those, the answer to this question becomes awfully clear, I
9 think, Your Honor. I hope you'll see it that way. What
10 really is the central issue before the Court here?

11 Well, that's -- I'm trying to get my hands around
12 that. If I were to listen to Century and read what they
13 wrote and all the things that they said today, I'd get a lot
14 of different things in mind, but really the only thing before
15 Your Honor seems to me is the 2019 statement. Are these --
16 is the Coalition, you know, are they -- have they hit the
17 bogie for the 2019 statement? Again, I'm not here to advocate
18 the Coalition's position. I don't represent the Coalition.

19 But what I can say is that's what is before Your
20 Honor. There's this mediation participation issue. Is this
21 related to that? I don't think so, because my clients aren't
22 involved in the Coalition anymore. We've also heard other
23 topics, you know, Brown Rudnick. How was Brown Rudnick being
24 paid, what is the Coalition, who are the Coalition's decision
25 makers? Well, I've already explained, Your Honor, my clients

1 are not. Mr. Kosnoff and Mr. Vanarsdale have removed
2 themselves from anything having to do with that.

3 But now, in listening to Mr. Schiavoni a moment
4 ago, now we're talking these lawyers' capabilities. Do they
5 have enough bandwidth to do their job, can they -- should
6 they be able to allowed to sign proofs of claim? What's the
7 nature of their firm? And they have this fascination and
8 have exhausted pages in their motions with, gee, where do
9 these guys work? Is it a marina? There's a fascination
10 with, gee, how are we going to serve them? Your Honor, as
11 soon as I entered my appearance, I mean, they knew how to
12 serve them. They serve me. I represent these individuals
13 and I've made that clear to Mr. Schiavoni a number of times.

14 They don't need to serve subpoenas, I've never
15 made that a, you know, a requirement here. I said serve me,
16 I'll accept service, don't waste your time on that, Your
17 Honor. So there's other questions of wonder why there's this
18 fascination and how many people are in this hearing are
19 actually working right now in a traditional law firm setting?
20 Very few, I would imagine. Should we all depose each other
21 on that, because we're not working in a traditional law
22 office setting? Of course not. Those aren't reasons to
23 compel a deposition of an attorney, an advocate in a case.

24 So what's really at issue, Your Honor?

25 It's the 2019 statement is all that's before Your

1 Honor that has anything remotely to do with Mr. Kosnoff and
2 Mr. Vanarsdale. The question though is how important
3 is the information that they have to that central issue?

4 And I could tell you, Your Honor, there's nothing that
5 they have that is not subject to confidentiality agreements,
6 be it a common interest agreement or work -- attorney-work
7 product or the attorney-client privilege. There's nothing
8 that Mr. Schiavoni has mentioned today that is in the
9 possession of Mr. Kosnoff or Mr. Vanarsdale. They just
10 haven't identified anything that's important.

11 But I listen carefully to Mr. Ruggeri's remarks
12 today, and he kept coming back -- Your Honor kept talking
13 about what I'm talking about now, and I'm probably repeating
14 what you said much better, but he kept coming back to this --
15 what's my absolute fallback. And his fallback was I got to
16 have the bylaws, I got to have the bylaws. That's where the
17 rubber meets the road here. So if the bylaws are where the
18 rubber meets the road here, they certainly don't need a
19 deposition of opposing counsel. That is I think very, very
20 telling, Your Honor. So that's the first factor.

21 All the sideshow here that Century has discussed
22 really is not important to any of the central issues before
23 Your Honor. Second factor, are there availability of less --
24 is misinformation available by less-intrusive sources? I
25 mean, I just kind of hit that. If the bylaws are so

1 sacrosanct and so important, maybe that's the solution.

2 Mr. Kosnoff and Mr. Vanarsdale aren't involved in
3 the Coalition anymore, so they aren't a source of information
4 of what's current. Who are the current decision makers at
5 the Coalition? Mr. Kosnoff doesn't know, Mr. Vanarsdale
6 doesn't know. Who filled their role? They don't know. They
7 are not the best source they are not even a competent source
8 now. They were made available for depositions while they
9 were a potential source of information like that, that they
10 didn't take them up on. He didn't -- they weren't really
11 interested in taking that deposition. Well, now, these two
12 individuals are no longer competent sources of current
13 information. So their deposition, you know, doesn't meet
14 their second consideration.

15 And third, Your Honor, what's the harm to these
16 two individuals 'clients' representational rights? And
17 everyone here knows the attorney-client privilege is the most
18 sacrosanct of all privileges. It'd be invaded with, I think,
19 just about every question I could think of that would be
20 relevant to any kind of relevant inquiry here. If they were
21 subjected to deposition, their adversary seeks information,
22 their adversary's trying to limit their clients' recovery
23 here.

24 So what kind of questions are they going to ask
25 that are not privileged? There really is nothing, Your

1 Honor, that would not jeopardize their client's
2 representational rights. And I'll just close with just a
3 real practical thought, Your Honor. We've all been involved
4 in a lot of depositions over the years, I suppose, and
5 sometimes they get off the rails and sometimes they're court
6 ordered and sometimes you go to a court-ordered deposition
7 and just wind up going back to court.

8 Your Honor, if Mr. Schiavoni hasn't yet nailed
9 down all the topics for his deposition, I've asked him for
10 now six weeks or so, tell me what you want to ask my clients,
11 just give me subject areas, and I haven't gotten an answer.
12 Today we got more and more answers. If we don't know what
13 the scope of this deposition's going to be, Your Honor, I
14 hate to tell you, but I think we're going to be back before
15 you with an ugly transcript, and it's just going to be an
16 unworkable wasteful mess. Maybe that's what my opponents are
17 after.

18 I'm asking, Your Honor, don't let that happen.
19 Let's not let this sideshow distract from what really needs
20 to get done in this case. Deposition of opposing counsel is
21 a drastic measure. The other side has not really made much
22 of an effort to meet or even address any of those three
23 criteria, those three considerations. So Your Honor, I would
24 ask that Your Honor deny the motion to compel and grant our
25 motion to quash this notice and for a protective order

1 preventing these two depositions. Thank you very much, Your
2 Honor.

3 THE COURT: Thank you, Mr. Wilks.

4 Mr. Schiavoni?

5 MR. SCHIAVONI: Your Honor, we attached to our
6 motion our papers excerpts from Mr. Kosnoff's Web site where
7 he holds himself out to the public as no longer practicing
8 law and is instead serving as a, quote, media consultant and
9 consultant in mass tort bankruptcies. So you know, it's a
10 bit much for an attorney to uphold the protections of the
11 opposing counsel rule, and at the same time claim that he
12 doesn't have any continued role in the cases. So I don't
13 think those standards apply. There are direct and material
14 issues here about 2019 C2B whether those have been complied
15 with here.

16 The fact that he hasn't signed the stipulation
17 that was signed last night by the other members of the
18 Coalition itself causes issues, and you know, even if one
19 applied the standard for practicing looking for someone
20 who's, quote, opposing counsel, the e-mail that he's authored
21 which has been made public, there was no effort made to claw
22 it back. There's a waiver on it now and nothing else, it
23 provides more than a basis to go forward with his deposition.

24 If for any reason the Court decides not to allow
25 this discovery, and this discovery was critical in Baron &

1 Budd, the District Court cites to Mr. Rice's deposition
2 testimony in the -- in the -- in its actual decision, because
3 without it, it was -- you know giving a list of questions
4 that one would be asked, one doesn't know what hasn't been
5 disclosed. It's sort of the whole point here.

6 You know, it's why we moved affirmatively for an
7 order under 2019 CB2 that all disclosable economic interests
8 be disclosed. Without that, there's no real way to know
9 what's been held back. But in the email itself, they talk
10 about raising money from, quote, mother funders. What the
11 interlocking ties and whether or not those parties all have
12 interests as part of a lock-up agreement to tie the votes,
13 without a deposition, I don't think we're going to get to the
14 bottom of it. The next best thing would be an order
15 requiring all disclosable economic interests to be put out.

16 Thank you, Your Honor.

17 THE COURT: Thank you. Okay. I'm hearing
18 somebody's computer probably. Mr. Abbott, is that the
19 conclusion of our agenda, or we have a status conference?

20 MR. ABBOTT: There is a quick status conference,
21 Your Honor. I'm going to just assume, unless the parties
22 chime in that what we just heard was both 12 and 13; 13 being
23 Mr. Kosnoff's motion for protective order to which I think,
24 again, two sides of the same coin. But if the Court wishes
25 to hear further on that or Mr. Wilks has something to add,

1 that would have been the next agenda item.

2 THE COURT: All right.

3 MR. WILKS: Thanks, Your Honor. I feel content
4 that I've said my say, you know, I think

5 Mr. Schiavoni and I could probably go back and
6 forth for another few hours, but Your Honor's had a long day.
7 So let me be the first to spare you.

8 THE COURT: Thank you. I will consider those two
9 together. Okay. So let's have our status conference.

10 MR. ABBOTT: Your Honor, it's not clear as I sit
11 here, that the parties necessarily feel it's necessary, but
12 I'll just defer quickly to Mr. Andolina who is a little
13 closer to it than I.

14 MR. ANDOLINA: Good afternoon, Your Honor, thanks
15 for your time today. Michael Andolina, White and Case on
16 behalf of the Debtors. Judge, I think we gave you the status
17 of the adversary proceeding in the very first moments of the
18 hearing today which feels about like three months ago, I'm
19 sure, for everyone, especially for Your Honor. But we do
20 have until October 22nd. We're hopeful to make significant
21 progress and come back to the Court with an agreed order
22 extending the preliminary injunction. We already have
23 meetings set up with the TCC, the UCC and the FCR on that
24 issue, and we'll certainly report back to the Court,
25 hopefully well in advance of that deadline.

1 THE COURT: Okay. And notice will get out to the
2 other parties in that litigation with respect to any
3 stipulation?

4 MR. ANDOLINA: Correct, Your Honor. That was
5 built into the schedule that Your Honor approved, I think,
6 two status hearings ago.

7 THE COURT: Okay. Great. Anyone else on the
8 status? Okay. Thank you. I am going to review the papers.
9 I think the matters that are outstanding are the 2019 motion,
10 the mediation party, the last two items with respect to
11 depositions of Mr. Kosnoff and Mr. Vanarsdale. And I think
12 they're really all of a piece or at least they're all
13 interrelated. So I'm going to review those papers and I will
14 rule probably not tomorrow, more likely Friday, and you'll be
15 contacted for a time.

16 MR. ABBOTT: Okay, Your Honor. Thank you.

17 THE COURT: That's the rule.

18 MR. ABBOTT: That's better said for today.

19 THE COURT: Okay, thank you all. We're adjourned.

20 (Proceedings concluded at 4:58 p.m.)

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CERTIFICATION

We, Carmel Martinez and Wendy Sawyer, do certify that we were authorized to and did listen to and transcribe the foregoing recorded proceedings and that the transcript is a true record to the best of our abilities.

Dated this 16th day of October, 2020.

/s/ Carmel Martinez October 16, 2020

Carmel Martinez

TX CSR No. 8128

FL FPR No. 1065

/s/ Wendy Sawyer October 16, 2020

Wendy Sawyer, CDLT